

DENNIS M. MCGRANE, SBN 015186
JEFFREY G. PAUPORE, SBN 007769
STEVE A. YOUNG, SBN016838
Deputy County Attorneys
YCAO@co.yavapai.az.us

Attorneys for STATE OF ARIZONA

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FILED

DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

CAUSE NO. P1300CR201001325

STATE'S RESPONSE TO
DEFENDANT'S MOTION TO
DISMISS/DISQUALIFY THE
YAVAPAI COUNTY ATTORNEYS
OFFICE

Assigned to Hon. Warren R. Darrow
Division PTB

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby files its Response to Defendant's Motion to Dismiss or Disqualify the Yavapai County Attorney's Office (hereinafter "Response" and "Motion" respectively). Because no wrongdoing occurred on the part of the State and no prejudice resulted, the Motion must be denied for the reasons set forth in the Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant's Motion is clearly emotionally charged but it is based upon a fundamental misunderstanding of the facts as well as the law. It is highly important that this Court look past the emotion and understand the facts before rendering a decision based upon the real facts and the law.

FACTS

The State concedes that its employees viewed and/or printed the subject documents as stated in the two reports from the Clerk of the Yavapai County Superior Court. However, that should not be an end to the analysis, as Defendant would argue.

The State, through Investigator Jimmy Jarrell, conducted an inquiry of the persons identified in those reports. A copy of Jarrell's report is attached hereto as "Exhibit A." This inquiry included interviews of the clerical staff identified in the Clerk's reports as well as attorney Jack Fields and the MIS staff person responsible for OnBase.¹

The report is very enlightening, but a few of the more important factors to consider will be mentioned here. First, the Yavapai County Clerk of the Court no longer provides paper documents to the County Attorney's Office. That includes the Criminal Division, Civil Division, and Victim Services Division. Rather, these divisions are allowed access rights into the OnBase system of the Clerk's Office to search and view/print documents. The YCAO staff can be required to retrieve hundreds of documents daily from the Clerk in a single electronic inquiry. This process is necessary to obtain court orders to ensure the attorneys are notified of future court dates, court orders, dates are entered into the database, etc., as well as the victims getting their statutorily required notification.

Because of the different types of work that each division performs, each has certain access rights that the others do not. The viewing/printing rights are granted by the Clerk's Office and then put in place by MIS. Therefore, if the Clerk's Office marks a document in a certain fashion and a division has computer access rights to that type of document, then that document will automatically be "viewed" and printed by support staff as part of their daily routine. Of note, the Civil Division has been granted access rights to adoptions and mental health cases that are not accessible to those in the Criminal Division. The same is true of some members of the Victim Services staff. Some of their members can view documents not accessible to others.

With that in mind, there appears to have been a computer programming oversight because those access rights gave the Civil Division (i.e. Attorney Jack Fields) access to

¹An attempt was made to interview staff at the Clerk's Office, but they required a court order to comply. Therefore, the exact nature of the testimony that would be elicited is unknown,

Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 documents that were not accessible to the prosecution team. The same is true of some members
2 of Victim Services. Additionally, no warning is given that a person is accessing something that
3 is labeled "sealed." Thus, there is a general and reasonable assumption that if you have access,
4 then you may look at the document.

5 YCAO viewing and/or printing of documents is done pursuant to their duty of keeping the
6 attorneys informed of court orders and giving notice to victims of future hearings. This would
7 explain why the majority of accessed documents were court orders. The individuals were looking
8 for case name, cause number and the next scheduled hearing date. There is no evidence that the
9 person's identified in the Clerk's reports intentionally read privileged information in any attempt
10 to thwart Defendant's rights. The subject documents were simply marked "sealed." There was
11 no obvious indication that the staff understood that they were accessing privileged information.
12 Most of them access sealed information on a regular basis.

13 YCAO staff view and print sealed documents on many other cases. This would include
14 adoptions, mental health, guardianships and juvenile cases. YCAO staff is used to viewing and
15 printing sealed documents. A "sealed document" to the YCAO staff means they are sealed from
16 the general public and the media, not parties to the litigation. If a sealed document pops up on the
17 computer screen of a YCAO employee, that employee reasonably assumes they have authority to
18 view and/or print the document. There simply was no notice that this sealed information was
19 different in this matter than it was in all others.

20 For instance, attorney Jack Fields is assigned to the Yavapai County Attorney's Civil
21 Division. One of his duties is to respond to public records request. Mr. Fields was assigned the
22 task of responding to interpleaders in the DeMocker case. All public record requests are reviewed
23 and responded to by Mr. Fields and the DeMocker case was no exception. Mr. Fields viewing of
24 the Democker OnBase file was for the purpose of responding to public record requests and the
25 requests to unseal the Clerk's record pursuant to the motions filed by the interpleaders. His
26 viewing and/or printing of the subject records were necessary in the fulfillment of his duties.
Like the other members of the County Attorney's Office, the fact that he was able to access the
sealed documents was not unusual for his responsibilities. Mr. Fields assumed, as everyone else
in the YCAO office had, that his access was authorized. The documents viewed or printed by Mr.

although there is no information that would indicate that it would be inconsistent with the
information provided in Exhibit A.

1 Fields and the other members of the County Attorney's Office did not violate or invade
2 Defendant's attorney-client relationship.

3 Therefore, the Court should keep in mind that there were many records accessed by
4 employees of the County Attorney's Office. They did so with the belief that if they were
5 looking at it, then it was appropriate to see/print it. Never in the history of prosecution in this
6 county have so many *ex parte* pleadings been filed. There was never any reason in the past to
7 worry about this situation. Additionally, had Defendant actually followed the proper
8 procedures under Rule 15.9 (see below), then there would have been some kind of notice,
9 perhaps, that something was going wrong. However, as Defendant did not follow the Rule, it
10 appeared as if everything was going per usual in a criminal case. Unbeknownst to YCAO,
11 Defendant and the original Court were not "playing by the rules." Now Defendant has the
12 audacity to ask this Court to punish the State for discovering, accidentally as it might be, his
13 wrongdoing, even though Defendant suffered no prejudice.

14 It is also very important to understand that viewing and printing of the subject documents
15 in no way translates to reading, comprehending and using the information in the State's case.
16 YCAO adamantly denies the viewing and/or printing of the subject documents was a conspiracy
17 to use, benefit, invade or spy on Defendant's right to counsel or any other right for that matter. If
18 this Court believes otherwise and concludes Defendant's rights could have been prejudiced, then
19 the State requests an evidentiary hearing on this issue pursuant to *Warner, infra* to demonstrate
20 otherwise.

21 LAW AND ANALYSIS

22 **I. The State's Viewing and/or Printing of the Subject Documents Did Not** 23 **Violate Defendant's Sixth Amendment Rights**

24 Defendant fails to even allege specific facts that demonstrate a Sixth Amendment
25 violation that resulted in prejudice to his defense. Rather, Defendant would have this Court
26 assume prejudice from the "violations" outlined above. That is not the law.

To determine whether a particular intrusion into the attorney-client relationship results in a
Sixth Amendment violation, the Court must consider: (1) the motive behind the intrusion; (2) the
use made of any materials obtained through the intrusion; (3) whether interference with the
attorney-client relationship was deliberate; (4) whether the State benefitted in any way from the
intrusion; (5) if materials were used, how any taint was purged from Defendant's trial; and (6)

1 whether Defendant was, in fact, prejudiced. *State v. Pecard*, 196 Ariz. 371 at par. 29, 998 P.2d
2 453 (App. 1999), citing *State v. Warner*, 150 Ariz. 123, 129, 722 P.2d 291 (1986).

3 A defendant's right to counsel includes protection from improper intrusions by the
4 prosecutor or other government agents. *Pecard, supra at par. 27*. However, not every intrusion in
5 the attorney-client relationship results in a denial of effective assistance of counsel. *Id. at par. 28*.
6 Whether a Sixth Amendment violation exists depends on whether the intrusions were purposeful
7 and whether the prosecution, either directly or indirectly, obtained evidence or learned defense
8 strategy from the intrusions. *Id.*

9 The first issue for the court to determine is whether there was an intrusion into the attorney-
10 client relationship at all. A close inspection of the complained about sealed and *ex parte*
11 documents reveals that many of these documents involved Defendant seeking the appointment of
12 various experts and consultants, such as: mitigation specialist, investigators, paralegals,
13 transcriptionist, computer forensic expert, DNA expert, blood spatter expert, crime scene expert,
14 cell phone tower expert, materials testing expert, fingerprint expert, forensic pathologist,
15 neuropsychologist, shoeprint expert, tire print expert, pathologist, forensic anthropologist, bone
16 biomechanics expert, financial expert, jury and trial consultant, victim outreach specialist, violence
17 risk assessment expert, field research assistant to challenge Arizona death penalty, etc. This was a
18 first degree murder case in which the death penalty was alleged. It would be expected, if not
19 common knowledge, that Defendant would seek the services described above. Simply knowing
20 the name of such experts does not infringe upon the attorney-client relationship. Simply knowing
21 that common homicide and death penalty investigators would be consulted does not infringe upon
22 the attorney-client relationship.

23 In addition, many of the various experts, consultants and specialists that Defendant made
24 *ex parte* applications for were later disclosed as witnesses for Defendant. *See last column of*
25 *attached Exhibit B, which are modifications of the Clerks' original reports reflecting date of*
26 *disclosure*. There has been no showing made by Defendant that the State attempted to contact or
did in fact contact any potential defense witness prior to that witness being disclosed by Defendant.
Accordingly, Defendant has failed to show that there has even been an intrusion into the attorney-
client relationship.

Sixth Amendment violations do not simply turn on the State's successful acquisition of
information but more fundamentally on the interference with access to counsel. *Pecard, supra at*

1 *par. 32.* In *Pecard*, the state improperly recorded or monitored telephone calls between the
2 defendant and his attorney or led the parties to believe they were being recorded or monitored and
3 the state improperly opened privileged mail. In *Warner, supra*, the state improperly seized legal
4 materials from the defendant.

5 By contrast, in this case it is alleged that the State improperly viewed sealed or *ex parte*
6 documents. The alleged conduct of the State in this case did not interfere with Defendant's access
7 to counsel. The viewing of sealed and *ex parte* documents does not equate to the monitoring of
8 telephone calls and the seizure of privileged documents. Since there has been no showing by
9 Defendant that the State interfered with his access to counsel, there is no Sixth Amendment
10 violation. (Of note, there still has been no showing that these documents should have been
11 confidential in the first place as no public hearing was held as required by Rule 15.9, see below.)

12 Only if Defendant presents evidence that his Sixth Amendment rights have been violated
13 does the burden of proof shift to the State to prove beyond a reasonable doubt that such violation
14 was not prejudicial *Pecard, supra at pars. 31-35*. As argued above, Defendant has not proven that
15 a Sixth Amendment violation has occurred. This ends the inquiry and the Court must deny his
16 motion in its entirety. If the Court, however, finds that Defendant has proven a Sixth Amendment
17 violation, the State requests that the Court make this finding on the record and by written order and
18 allow leave to the State to prove at an evidentiary hearing that Defendant has not been prejudiced.

19 Finally, if the Court finds that Defendant has suffered prejudice, dismissal of the
20 indictment is neither automatic nor favored as the primary remedy. *Pecard supra at par. 39*. In
21 addition to consideration of a defendant's own constitutional rights, courts have also recognized
22 society's interest in the administration of criminal justice. *Pecard supra at par. 38*. Courts must
23 narrowly tailor remedies to Sixth Amendment violations to avoid unnecessarily infringing on this
24 societal interest. *Id.* More particularly, absent demonstrable prejudice, or substantial threat
25 thereof, dismissal of the indictment is plainly inappropriate, even though the violation may have
26 been deliberate, which in this case it was not.

Clearly, the remedy of dismissal is not appropriate in this case. The remedy of
disqualification is not warranted either. Rather, the Court's approach to remedy a Sixth
Amendment violation is to identify and then neutralize any taint by tailoring relief appropriate in
the circumstances to assure Defendant the effective assistance of counsel and a fair trial. *Warner,*
supra at p. 128. Absent prejudicial impact on the criminal proceedings, there is no basis for

1 imposing a remedy in a proceeding which can go forward with full recognition of Defendant's
2 right to counsel and to a fair trial. *Id.*

3 **II. The Code of Judicial Conduct as well as the Ethical Rules Prohibit**

4 ***Ex Parte* Communications unless Expressly Authorized by Law**

5 It must not be forgotten that the real underlying issue here relates to documents
6 generated as part of improper unauthorized *ex parte* communications with the original Court
7 (Judge Lindberg). The State has asserted on many occasions that the original Court appears to
8 have held many *ex parte* conversations with the defense team² that were unauthorized by law.
9 The State has repeatedly asked that this matter be looked into to ensure the State's right to a fair
10 and impartial trial. However, to date, those requests have been ignored. The State reasserts its
11 request herein.

12 E.R. 3.5 of the Rules of Professional Conduct prohibits a lawyer from engaging in an *ex*
13 *parte* communication with the Court, unless authorized by law. Rule 2.9 Code of Judicial
14 Conduct provides: "A judge shall not permit or consider *ex parte* communications outside the
15 presence of the parties or their lawyers concerning a pending matter. . . ." One of the exceptions is
16 when a judge is specifically permitted by law to do so.

17 There are several *ex parte* hearing problems with the case at bar. The first is in regards to
18 an indigency finding pursuant to Rule 6.4. The second involves Rule 15.9, but there are many
19 violations of that Rule.

20 **A. Hearing on Rule 6.4, Rules of Criminal Procedure**

21 The problems in this case began on July 6, 2009, when Defendant filed a "Motion to File
22 Rule 15.9 Applications *Ex Parte*, *in Camera*, and Under Seal and for an Expedited *Ex Parte*, *in*
23 *Camera*, Under Seal Hearing." Defendant requested that a hearing be held on or before July 21,
24 2009. The State received this motion on July 6, 2009. Under the criminal rules, the State had
25 10 days to file a response to Defendant's motion.

26 However, on the afternoon of July 6, 2009 the Court, sua sponte, sealed Defendant's
motion and scheduled a hearing for July 10, 2009. The Court did not allow the State to respond
to the motion, nor did it give the State or the victims their notice of the July 10, 2009 hearing.
Additionally, it conducted the hearing *ex parte*, in violation of Rule 15.9 (see below). Before

² It has been learned that the Public Defender in his role as contract administrator may have
been part of these unauthorized *ex parte* conversations, too.

1 the hearing on July 10, 2009 Defendant filed a combination motion entitled Defendant's Motion
2 of Indigency and for Rule 15.9 Appointments. Defendant did not give the State or the victims
3 their notice pursuant to Rule 35.1.

4 The propriety of an *ex parte* hearing relating to Defendant's indigency and requests for
5 payments of costs and/or fees is called into question by Rule 6.4 of the Rules of Criminal
6 Procedure. A determination of whether a defendant is indigent is made pursuant to Rule 6.4.
7 This rule requires a defendant to complete under oath a questionnaire concerning his financial
8 resources. A court is required to examine a prospective indigent defendant to determine
9 qualifications to be declared indigent. There is no provision in the law to hold a Rule 6.4 hearing
10 secretly and *ex parte*, and as noted below, Rule 15.9 does not provide any such authority.
11 Defendant's questionnaire is a matter of public record and cannot be kept confidential under any
12 circumstances. No explanation has been provided as to why such a matter was heard *ex parte*.
13 DeMocker's indigency questionnaire and the record determining him to be indigent have
14 remained improperly sealed for almost two years.

15 B. Hearings on Rule 15.9, Rules of Criminal Procedure

16 Regarding Rule 15.9 there are several issues. Rule 15.9(b) establishes the procedures for
17 the appointment of investigators and expert witnesses for indigent defendants. The plain
18 language of this Rule states:

19 “(b) *Ex parte* proceeding. No *ex parte* proceeding, communication, or request may be
20 considered pursuant to this rule *unless a proper showing is made* concerning the need for
21 confidentiality. Any such proceeding, communication, or request shall be recorded
22 verbatim and made a part of the record available for appellate review.

23 Emphasis added.

24 In the case at bar, the “proper showing” according to Rule 15.9 is a hearing at which the
25 State and victims were entitled to notice and the right to be heard on whether or not the matter
26 should proceed in an *ex parte* fashion. **The proper procedure is not an *ex parte* proceeding before you get an *ex parte* proceeding**, as was done in this matter.

In the recent case of *Morehart v. Barton*, --- P.3d ---, 2011, CV-10-0327-PR., April 29,
2011, WL1599648, the issue was whether the victims had a right to be present at the return of
out-of-state summonses. The court determined this was a “purely procedural matter” not
implicating defendant's right to confront witnesses and evidence against him that have no

1 “relation, reasonable substantial, to the fullness of his opportunity to defend against the charge.”
2 Since the defendant did not have a right to be present at the return of a summons, the victims
3 did not have a right to be present.

4 An important distinction in *Morehart*, that is blatantly absent in this case, is the fact that
5 a public hearing was held to determine whether or not the defendant was entitled to an *ex parte*
6 hearing on his Rule 15.9(b) motion. In *Morehart*, the trial judge ordered an *ex parte* hearing
7 only **after** considering arguments from the state and then detailing why confidentiality was
8 required and the judge explained in open court that the hearing would be limited to mitigation
9 discovery matters. The original Court in this matter failed to carry out this very important
10 procedural step which violated the law. At this point in time, it is doubtful that the original
11 Court’s actions would withstand judicial scrutiny.

12 The second problem is that you cannot have a blanket ruling, heard and issued *ex parte*,
13 that allows for all future requests, the nature of which are unknown, to be heard *ex parte*. Rule
14 15.9 requires a chance for the state and victims to be heard **before** proceeding *ex parte*.
15 Defendant simply must file another application and make the proper showing at a public
16 hearing, or he is conducting an improper *ex parte* communication.

17 Defendant claims the State had notice of approximately thirty Rule 15.9(b) *ex parte*
18 applications because Defendant’s initial motion “requests that this Court permit the filing of Rule
19 15.9 **applications** *ex parte*, in camera, and under seal.” According to Defendant, the State knew
20 or should have known that Defendant’s initial Rule 15.9(b) motion contained a blanket request to
21 conduct subsequent Rule 15.9(b) proceedings *ex parte*. If Defendant’s rationale were true, the
22 Court violated Rule 15.9(b) prohibition that “no *ex parte* proceeding, communication, or request
23 may be considered pursuant to this rule *unless a proper showing is made* concerning the need for
24 confidentiality.” The Rule and case law are clear that the State is entitled to notice; the
25 opportunity to timely respond; and the court must make a finding of a proper showing of the need
26 for confidentiality **for each and every Rule 15.9(b) *ex parte* application** pursuant to the plain
language of the Rule. There is no evidence that this was done in this case.

The defense is correct in stating the State has repeatedly tried to get answers to these
questions. Until these questions are answered, a cloud of suspicion hangs over a number of the
original Court’s decisions. Both parties, not just Defendant, are entitled to a fair trial and the
State and victims’ rights were clearly violated.

1 If the original Court had followed the proper procedure, then the defense's abuse of the
2 Rule 15.9(b) process could have been addressed by the State and victims in a timely fashion.
3 After the original Court sealed the July 6, 2009 Rule 15.9 proceeding and permitted many others
4 to proceed *ex parte*, Defendant ceased providing the State (and thus the victims) notice. The
5 defense hid under the cloak of secrecy and inappropriately applied for financial assistance to
6 employ "additional paralegals, a victim outreach specialist, and an expert jury consultant,"
7 matters which are **clearly** not confidential in nature. The original Court allowed the defense
8 unfettered *ex parte* access to his Court in violation of Rule 15.9(b), the Ethical Rules governing
9 the behavior of all lawyers, and the Judicial Canons themselves. Although Defendant openly
10 violated the Arizona Rules of Criminal Procedure and the Rules of Professional Conduct, he has
11 the audacity to now move this Court to help him in further reaping from his wrongdoing by
12 dismissing the case or removing YCAO as the prosecution. This Motion simply must be denied.

13 Therefore, the State again asks this Court to review the *ex parte* hearings in this matter
14 as the State does not have access to transcripts, pleadings, etc. in the matter. The State needs
15 assurance that its right to a fair trial has not been damaged.

16 CONCLUSION

17 Although the State accessed documents that it was not supposed to have access to³, the
18 mistake was unintentional and was done through procedures not set up by YCAO but rather the
19 Clerk of the Court. Defendant has not alleged or presented any evidence of prejudice for the
20 viewing and/or printing of the sealed orders and *ex parte* Rule 15.9(b) applications. There is no
21 evidence that the State used any information in its case-in-chief or in preparation for trial.

22 Simply knowing the name of Defendant's experts does not infringe upon the attorney-
23 client relationship. It is common if not required by defense counsel in death penalty cases to
24 consult with investigators and experts. The fact that Defendant is seeking necessary experts and
25 the State learns their names does not infringe upon the attorney-client relationship. Additionally,
26 most experts were disclosed to the State by the defense prior to trial.

Under the circumstances, dismissal of this case is not appropriate. The remedy of
disqualification is not warranted either. Defendant cannot benefit from what can only be called
harmless error on the part of the State, some of which is to blame on Defendant himself. (The

³ This assumes that all the *ex parte* proceedings were conducted properly, which the State still contests.

Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 15.9(b) applications were conducted in violation of the rules and there still has not been an
2 adequate explanation on why this was done.)

3 Absent prejudicial impact on the criminal proceedings, there is no basis for imposing a
4 remedy in a proceeding which can go forward with full recognition of Defendant's rights to
5 counsel and to a fair trial. However, if a Sixth Amendment violation is proven, the Court's
6 approach to a remedy is to identify and then neutralize any taint by tailoring relief appropriate in
the circumstances to assure Defendant the effective assistance of counsel and a fair trial.

7 Defendant has not demonstrated or alleged any prejudice to his defense. That is simply
8 because none can be shown. He simply wants this Court to act out of emotion rather than the
9 entirety of the facts as they are applied to the law. At the same time, he wants this Court to look
10 away from the apparent misconduct of the prior Court and his role in that apparent misconduct.

11 Defendant's Motion must be denied.

12 **RESPECTFULLY SUBMITTED** this 27th day of May, 2011.

13 **Sheila Sullivan Polk**
14 **YAVAPAI COUNTY ATTORNEY**

15 By: Dennis M. McGrane

16 **Dennis M. McGrane**
17 Deputy County Attorney

18 **COPY** of the foregoing **delivered**
on the 31st day of May, 2011, to:

19 Honorable Warren R. Darrow
20 Division PTB
21 Yavapai County Superior Court

22 **COPY** of the foregoing **emailed** this
27th day of May, 2011, to:

23 Craig Williams
24 Attorney for Defendant
25 Yavapai Law
3681 N. Robert Rd
26 Prescott Valley, AZ 86314
yavapailaw@hotmail.com
(via email)

Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 Greg Parzych
2 Co-counsel for Defendant
3 222 No. Central Ave.
4 Phoenix, AZ 85004
5 gparzlaw@aol.com
6 (via email)

7 Daniela De La Torre
8 245 West Roosevelt, Suite A
9 Phoenix, AZ 85003
10 Attorney for victim
11 Charlotte DeMocker
12 ddelatorre@azbar.org
13 (via email)

14 Melody G. Harmon
15 210 S. 4th Ave. Suite 220
16 Phoenix, AZ 85003
17 Attorney for victim
18 Katie DeMocker
19 mharmonlaw@gmail.com
20 (via email)

21 By: 
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23
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25
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Yavapai County Attorney's Office Investigative Report

Criminal Complaint/Civil Complaint/Inquiry

Type/Offense: Addendum to Response to Motion

Inquiry re: Response to "Motion to Dismiss for Prosecutorial Misconduct or Motion to Disqualify the Yavapai County Attorney's Office" (re: Steven DeMocker, VP1300CR201001325)

Investigation Case #: N/A

Location of Occurrence:

Yavapai County Attorney's Office, Prescott, Arizona and Yavapai County Attorney's Office, Camp Verde, Arizona

Date/Time of Occurrence: Between 03July2008 - current

Connect Up DR#: N/A

Date of this Report: 26May2011

Complainant/s: See report, following

Victim/s: N/A

Suspect/s-Defendant/s: N/A

Investigator: James A. Jarrell, Yavapai County Attorney's Office

On Friday, 06May2011 I met with Yavapai County Attorney's Office (YCAO) Deputy County Attorneys Jeff Paupore and Steve Young, Chief Investigator Randolph Schmidt, and Paralegal Rhonda Grubb. Paupore provided me with a photocopy of a "Motion to Dismiss for Prosecutorial Misconduct or Motion to Disqualify the Yavapai County Attorney's Office", which he described as having been recently filed by Steven DeMocker's defense attorney, Craig Williams, re: VP1300CR201001325.

Paupore told me that the motion filed by Williams contained allegations that employees of the YCAO and an employee and former employee of the Yavapai County Sheriff's Office (YCSO) had "...illegally viewed and printed sealed ex parte pleadings using the OnBase system." (sic, Motion to Dismiss).

Paupore asked me to contact those individuals listed in Williams' motion and determine if they had, in fact, viewed records in OnBase, and if they printed those documents as Williams alleged. Paupore requested that I contact the Office of the Clerk of Superior Court, Yavapai County and get information about the OnBase system, which is a proprietary database used by the Clerk's Office and which the Yavapai County Attorney's Office and other Yavapai County agencies, offices, and departments, and the public, have varying levels of access to as determined by the Clerk's Office. Paupore also asked me to meet with Yavapai County Management Information Systems (MIS) Programmer Analyst I, Susan Murphy, who is tasked with, among other duties, administering Yavapai County employee access to OnBase. Paupore felt Murphy may be able to provide me with information relative to Yavapai County "user groups" and varying levels of access provided to County employees in OnBase.

On the same date, I accessed the website of "The Daily Courier", a local newspaper, and printed an article dated 02May2011 related to this motion (attached).

On Monday, 09May2011 I e-mailed Susan Murphy to request a meeting, in order to discuss the issues listed above. While I did not receive a response from Murphy, I did receive a response from MIS Director Michael Holmes (attached), stating that MIS would prepare a document with an overview of OnBase for me to review, prior to my meeting with them.

Clerk of Superior Court, Yavapai County

On Monday, 09May2011 I went to the Office of the Clerk of the Superior Court, Yavapai County and spoke to Clerk of the Superior Court Sandra Markham, and three (3) staff members, Renee Braner, Karen Wilkes, and Katherine Gibbs. I asked Markham for general information about the OnBase system, for use by the Yavapai County Attorney's Office in preparing a response to the motion filed by Craig Williams and I needed to know how the Clerk's Office used OnBase because I was unfamiliar with the system. Markham told me that she was uncomfortable discussing OnBase with me, and that she would have to consult with her legal advisor at the Arizona Attorney General's Office to determine what she would share with me. Later that afternoon, I received a telephone message from Markham in which she said that she was "uncomfortable" providing me with information about their "internal process", that she was not a party to this case and that, with advice from her legal advisor, she would not cooperate in this investigation absent a court order. I advised Paupore and Schmidt of this information.

Seretha Hopper, YCAO Legal Secretary

On Monday, 09May2011 at approximately 1415, I met with YCAO Legal Secretary Seretha Hopper at YCAO, Prescott, Arizona. During my meeting with Hopper, she told me the following:

Hopper started employment with YCAO in August of 2007 as a Legal Clerk. Part of her duties at that time included physically walking to the Yavapai County Superior Court Clerk's Office daily, and retrieving hardcopies of documents and records related to, and including, but not limited to: Minute Entries, Motions, Plea Agreements, Charging Documents, Judgements and Sentencings, Orders and Petitions, Warrants Issued, Bonds Posted, and records related to both adult and juvenile case, criminal and civil case, and adoption, mental health, and guardianship cases in which the YCAO is involved.

Hopper estimated that in approximately 2008, the Court Clerk's Office began scanning these types of documents into OnBase, their proprietary database which they granted YCAO access to.

Part of Hopper's (and other YCAO Legal Clerks') daily duties evolved into accessing OnBase and printing hardcopies of these records for distribution within the YCAO. Hopper said that, at times, when she queried OnBase for these documents, she has seen 200-300 individual entries of 1 or more pages each (*e.g. the motion this inquiry is concerned with is 36 pages in length, with an addendum of approximately 47 pages*). Hopper said that, once all of the documents printed, she would collate/staple them and review them for pertinent information. Hopper said that she was only interested in a limited amount of information on each court record, which included insuring that the CR (Court Record) number and defendant's name were correct, and determining the name of the prosecutor assigned to the case for proper routing (Hopper added that, more than once, she had found documents that had an incorrect CR number or incorrect defendant name as they related to each other. This is why she double-checks the accuracy of that information on each document). The only other piece of information on the document that had any relevance to her duties was the next action ordered by the judge in a particular case, which Hopper was required to make a written notation of in "P2", the YCAO proprietary case tracking database. That type of information was, commonly, a date/time/and location for the next hearing on a given case. YCAO personnel who were assigned to, or assisting with, particular cases could then refer to those notations in P2 to track the case progress as it related to their particular duties on a given case.

Hopper said that it was not uncommon for her to handle documents related to Steven DeMocker, as all documents generated by the courts in all cases which the YCAO was involved with were scanned into OnBase, and her duties required her to view/print/review all case documents on a daily basis for routing purposes. She also said that her job entailed regularly handling documents and records which were generally considered "Confidential", and "Sealed" from the general public or media. Hopper did not know what "ex parte" meant, and did not remember ever seeing documents with the phrase "ex parte" on or in them. Hopper said that, in addition to records in OnBase, she handles and routes hardcopies of documents and records which are placed into the YCAO mailbox in the Prescott Courthouse by the Justice Courts, the Public Defender's Office, private attorneys and others. Hopper said some of those documents may be labeled "Sealed", or "Confidential", and she deals with these on a regular basis, too. Hopper said that, at no time, has anyone ever directed her to research the DeMocker case outside the scope of her duties, nor has she taken it on herself to conduct research on the DeMocker

case outside the scope of her duties. Hopper did not know anything about her level of access to records in OnBase, however she assumed if she could access/open a document, someone in her chain of command or at MIS or the Court Clerk's Office had determined she was cleared to have access to that document. Hopper did not recognize any of the records listed under her name in Williams' addendum to the motion in question.

Barbara Genego, YCAO Legal Clerk

On 09May2011 at approximately 1515hrs., I met with YCAO Legal Clerk Barbara Genego at YCAO, Prescott, Arizona. During my meeting with Genego, she told me the following:

She has worked for the YCAO since August of 2005 as a Legal Clerk. Her daily duties include accessing all records available to her in OnBase and viewing/printing/collating/reviewing these records for pertinent information. Genego said that the records and minute entries she handles on a daily basis include all records generated by the courts which are intended for the YCAO, including, but not limited to all motions filed by defense counsel, and dates and times for all hearings and proceedings in all cases in which the YCAO is involved. Genego said when she reviews records, she does not do a careful reading as she is only interested in specific information. This includes matching the CR number and defendant name, determining which YCAO Deputy County Attorney is assigned to the case, noting any pertinent information into "P2", the YCAO case tracking database, and routing hardcopies to appropriate legal secretaries. Genego said she is not tasked with doing a careful reading of OnBase records, but she does not have time to do a careful reading. She said that she spends even less time with records in major cases and that, frequently with major cases, she may be requested to 'fast track' the records to the assigned Paralegal rather than routing it through a legal secretary first. She described how she handled DeMocker records as "...hit and run, get it to Rhonda...", i.e. as soon as she recognized a record as related to the DeMocker case, she immediately hand carried it to the assigned Paralegal.

Genego said that, prior to the utilization of OnBase, she would have to walk to the Yavapai County Superior Court Clerk's Office at the courthouse and pick up hardcopies of all filings and carry them back to the YCAO for handling. She didn't specifically remember when OnBase began to be utilized, but remembered that it had been since she came to work at the YCAO. Genego did not know anything about her access level in OnBase and worked under the assumption that she was cleared to view any record which appeared on her screen, as she consistently dealt with information that was confidential and not available to the general public or media. Genego did not specifically remember viewing any of the documents listed under her name in Williams' motion, but said it was possible, since her job was to retrieve all records in OnBase and, if the Court Clerk's Office had included those particular records in OnBase in the records made available to YCAO, she may very well have accessed them as part of her regular duties. Genego did not remember seeing anything in OnBase that was marked "Filed Ex Parte Under Seal"

or "Filed Under Seal". Genego did not recognize any of the records listed under her name in Williams' addendum to the motion in question.

Marie Higgins, YCAO, Victim Services, Victim Advocate

On 10May2011 at approximately 0817hrs. I met with YCAO Victim Services Victim Advocate Marie Higgins, formerly Marie Martinez in her office at YCAO, Prescott, Arizona. Higgins is currently assigned as an Early Disposition Court (EDC) Advocate, but is assigned to the DeMocker case as a Victim Advocate for the victims in the homicide of Carol Kennedy. She said that, prior to being an EDC Advocate she was a Felony Advocate, which included contacting victims in felony cases, advising them of their rights as victims, following up with them on case proceedings, and sometimes accompanying them to, or representing them in, court proceedings. Higgins said that she fills in for, or assists, various other employees in Victim Services and also helps with training Victim Services volunteers. She said that, in relation to the DeMocker case, she attends hearings, makes notes of what occurs in the hearings and forwards that information to the victims. This also includes any information she becomes aware of through regularly viewing minute entries, motions, orders from the court, and many other OnBase records related to the case.

Higgins said that, when she views case records in OnBase, she enters a CR number, which results in all filings, motions, hearings, etc. related to that CR number within the time frame specified. She then reviews those documents to determine if they contain information she is required, by law, to communicate to victims in the case.

Higgins said she uses OnBase with the assumption that, if she can view a record, someone had pre-determined that her level of access should allow her to view that record. Higgins said she did not know what level of OnBase access other YCAO employees have. Higgins did not recall viewing any documents in OnBase which were labeled "Filed Under Seal", or "Filed Ex Parte Under Seal".

Higgins said that, until approximately 2008, Victim Services received hardcopies of any court records generated on any YCAO cases which involved victims from YCAO legal clerks, which were provided to them from the Office of the Clerk of the Yavapai County Superior Court. She said that in 2008, the Court Clerk's Office began scanning all of those records into OnBase, which Victim Services then accessed from their work stations. She said that, to her knowledge, Victim Services personnel are only provided access to "victim cases", or only those cases which involve victims that the YCAO is involved with.

Higgins said that it has not been uncommon for her to receive "Filed Under Seal" documents in the DeMocker case, which she received in hardcopy form as "Filed Under

Seal” minute entries in sealed envelopes. These minute entries represented court hearings she attended which were sealed from the public and the media, but which she attended as the representative of the victims. She said those envelopes were routed straight to her.

Higgins said that, in relation to the hardcopied “Filed Under Seal” minute entries, she did not know who else may have case received copies of those. I asked her to look at one of the “Filed Under Seal” minute entries to determine who may have been noted on the distribution list. She pulled one minute entry from a stack of 20-30 envelopes and read that the minute entry had been Cc:’d to the following people or entities:

Dean Trebish
Christopher Dupont
YCSO Detention Services Records
Victim Services
John Napier for Renee Girard

There was no entry for the Yavapai County Attorney’s Office.

Higgins said that, in her experience, it was not common for either Victim Services or a prosecution team on any given case to cross reference distribution lists on documents received, to determine if the other entity may have received a copy of the record. Higgins did not know if the documents she received in hardcopy form, that were minute entries from “Filed Under Seal” hearings she attended, also appeared in OnBase, or not. Higgins did not know if anyone else may have been able to view those documents in OnBase.

Higgins said that, although she may collect newspaper articles related to cases, and she keeps records of any hardcopy records she receives, she does not print or save any electronic records related to cases.

Higgins did not recognize any of the records listed under her name in Williams’ addendum to the motion in question

John McDormett, YCSO Detective

On Tuesday, 10May2011 at approximately 0950hrs. I met with Yavapai County Sheriff’s Office Detective John McDormett at YCAO, Prescott, Arizona McDormett said that, for a period of time, he was the YCSO case agent for the DeMocker case. He said that, as case agent, it was imperative for him to stay abreast of any developments in the case. Because he wasn’t always able to be present with the prosecutor at every hearing, he regularly reviewed case-related records in OnBase. He said that it is considered current best practice for any investigator who is a case agent and who has a certain level of responsibility for organizing ongoing efforts in the case, to know what was happening with the case. McDormett emphasized that he viewed every DeMocker case-related

document that was accessible to him in OnBase. McDormett said that the fact records were accessible to him in OnBase led him to believe that he rightfully had access to them. McDormett said he uses OnBase with the assumption that any documents he would be legally prohibited from viewing would not be accessible to him in OnBase.

McDormett said he does not know whether or not any documents related to the DeMocker case that he viewed were "Filed Under Seal" or unsealed, although he has heard since that the DeMocker defense attorney has made allegations that he had viewed "Filed Under Seal" or "Filed Ex Parte Under Seal" documents. McDormett said that he did not remember seeing any documents that were labeled "Filed Under Seal" or "Filed Ex Parte Under Seal".

McDormett said that, at no time since he was assigned to the DeMocker case did anyone direct him to access records that they, or he, knew that he would be prohibited from viewing. He also said that, at no time, did he research any DeMocker records apart from his specific job duties.

McDormett did not recognize any of the records listed under his name in Williams' addendum to the motion in question

Pam Moreton, YCAO, Director, Victim Services

On Tuesday, 10Mar2011 at approximately 1304hrs. I met with Pam Moreton, the YCAO Director of Victim Services/Prescott at YCAO, Camp Verde, Arizona. Moreton said that she has been employed by YCAO since August of 1996, and was previously a Supervisor in Victim Services, working for the previous Director.

Moreton told me her understanding was that not every employee in Victim Services has the same level of access in OnBase. She said that, when she first started with Victim Services, the entire unit had the same level of access, which was slightly less access than the Legal Secretaries in the YCAO. Later, when OnBase was fully implemented, a certain user group in Victim Services was created with a higher level of access. Some Victim Services employees have access to Grand Jury-related records, and cases involving a juvenile victim of a sexual offense. She said that she is currently working to get permission from the Court Clerk's Office for the other employees in Victims Services to access those records. Moreton said that her level of access, as Director, allows her to view juvenile records and Grand Jury-related records, among other records that are generally unavailable to most employees in Victim Services.

Moreton said that her employees use OnBase daily to access court minute entries to review their contents, and to relay that information to victims per their respective job duties.

Moreton said that it was not uncommon for her to access DeMocker records in OnBase, in order to provide direction or advice or assistance to Victim Advocates and Notification Advocates who were working on the DeMocker case.

Moreton said that, at no time, has anyone ever directed her to access documents they or she knew to be off limits to her. She said that she did not conduct any research in DeMocker case records outside of the scope of her duties. Moreton said that she remembered seeing a cover sheet marked "Filed Under Seal" before, as shown in Williams' addendum to his motion, but cannot remember if it was a record related to the DeMocker case, and cannot remember if it was a record scanned into OnBase or if it was a hardcopy. Moreton has never seen a cover sheet marked "Filed Ex Parte Under Seal".

Moreton said that she performed her job duties with the assumption that, if a record in OnBase was specifically prohibited to anyone in Victim Services, they would not be provided access to it. She said that, therefore, she never thought it would be possible for she, herself, to view a document she wasn't supposed to.

Moreton did not recognize any of the records listed under her name in Williams' addendum to the motion in question.

Pam Spear, YCAO Legal Clerk

On Tuesday, 10May2011 at approximately 1346hrs. I met with Pam Spear, YCAO Legal Clerk/Camp Verde at YCAO, Camp Verde, Arizona. Spear told me the following:

As part of her daily duties, she accesses OnBase to view/print/review minute entries from the Superior Court divisions in Camp Verde. She said she collates the documents and routes them to the respective legal secretaries for the specific prosecutors assigned to the case, which she determines through matching the CR number on the minute entry with the prosecutor shown as assigned in "P2". She said that she also has to enter information from the minute entry into P2, in the form of notations to the case. Spear also said that, in the event a case being prosecuted in a Prescott Superior Court division is seen in a Camp Verde Superior Court division, she routes any minute entries from those hearings back to the YCAO Prescott office. When I asked Spear how many documents may be related to a given day's minute entries, she said that what she prints out for a day may use an entire ream of paper, or approximately 500 individual sheets of paper.

Spear said that she only looks at specific pieces of information on a minute entry, i.e. whether the CR number and the defendants' name(s) are in correct correlation, and what the next action on the case is, as noted on the documents.

Spear described her work flow as beginning with collecting booking information from the previous day or weekend by physically walking over to the jail. On her return she separated the bookings into felonies and misdemeanors, and faxes the information to the YCAO Charging Unit and Victim Services/Prescott, and provides photocopies of victim

cases to Victim Services/Camp Verde Victim Advocate Julie Bachman. Once that is completed, she begins working on minute entries. I asked Spear how long that process typically takes, and she said it normally lasts from 0700hrs. – 1200hrs. Spear said she would not have time to read minute entries in greater detail than she does for her specific duties, and still complete the rest of her job in a timely manner, which includes answering phones, walk ins, and mail.

Spear said she remembers handling DeMocker-related records, in the form of minute entries in OnBase, after the case was being seen in Superior Court/Camp Verde. Spear did not recognize the specific entries listed under her name in Williams' addendum to his motion, however she felt certain she had accessed far more records related to DeMocker than shown in the addendum, as a matter of course in her daily duties. Spear said she would not remember any one specific record because she looked at minute entries too quickly for them to make any impression on her.

The only thing Spear was able to tell me about her access level was that she knew that she saw whatever she was allowed to see when she entered OnBase. She said her understanding was that she was granted whatever access someone above her felt was necessary for her to do her job.

Spear did not remember having viewed any records that were labeled "Filed Under Seal", or "Filed Ex Parte Under Seal". She added that what she is given access to today in OnBase is in the same format the documents were when she was picking up hardcopies of minute entries at the Court Clerk's Office.

Spear said that at no time has anyone ever directed her to conduct research on the DeMocker case outside the scope of her duties, nor has she researched the DeMocker case on her own, outside of the scope of her duties.

Steve Page, RMIN, Forensic Computer Analyst

On 11May2011 at approximately 0845hrs. I met with former YCSO Detective Steve Page at Rocky Mountain Information Network in Phoenix, Arizona, where Page is currently employed as a Forensic Computer Analyst. Page worked for the YCSO from 22November1999 – 25March2011. Page told me the following information:

During a portion of his time at YCSO, he was assigned to forensically examine computers related to the DeMocker case. As part of his assigned tasks, and as something he felt would be helpful to him in his duties in the investigation, he reviewed police reports and court documents. The court documents were both in hardcopy format and in OnBase. Page stated that, in his experience and with his training, this was a standard practice in police work

Page said that no one ever talked to him about his level of access in OnBase, and he used it regularly to view his payroll information. Page said no one ever told him anything about records in OnBase that may be off limits to him, and he said that he used OnBase with the assumption that he was allowed to view any records that he could access.

I showed Page the record(s) listed by Williams in his addendum to this motion. Page could not recall anything about those record(s). Page stated that he never saw any document related to the DeMocker case which bore any cover sheet labeled "Filed Under Seal", or "Filed Ex Parte Under Seal".

Page said that he was never directed by anyone to research the DeMocker case outside of the scope of his assigned duties, nor did he take it upon himself to access records he knew to be off limits.

Barb Paris, YCAO Legal Secretary

On Thursday, 12May2011 at approximately 0750hrs. I met with Barb Paris, YCAO Legal Secretary/Prescott at YCAO, Prescott, Arizona. Paris told me the following:

Her primary duties currently include misdemeanor cases in the Verde Valley and Bagdad. She said that, during the time in question in Williams motion, she was working in the YCAO Victim Services Division as an Administrative Assistant to the Director. During that time she worked on grants related to Victim Services, finances, and call intake, including walk-in traffic.

I showed Paris the records listed under her name in Williams' addendum to his motion. Paris did not recognize those specific records. Paris said that, during the time in question, any records or information that came into Victim Services came through her hands initially and she routed them to the proper person, and this process would have included anything related to the DeMocker case that came into the office at the time. She said that the documents and records she handled were both in electronic form (e-mails and/or attachments) or hardcopy form, although she didn't remember specific DeMocker records. She said that, during her time there, she also assisted with victim notification. Victim notification consisted of handling notification of victims on a large number of cases, and she was not assigned to any one or any number of specific cases; it was handled on a random basis. Paris said it was incumbent on her to be aware of the status of cases, to be sensitive to who she was talking to on the phone or as a walk-in, and knowing how to relate to people based on their relationship to a case.

Paris said that she used OnBase regularly as part of her job duties. She said that no one had ever talked to her about her level of access in OnBase, and no ever discussed with her what she was cleared to view in OnBase and what she was prohibited from viewing in OnBase.

Paris said she has never seen a record, including minute entries in hardcopy form or in OnBase, which bore a cover sheet labeled either "Filed Under Seal", or "Filed Ex Parte

Under Seal”. However, she said that all of the information she deals with in both her current job, and dealt with in her previous job in Victim Services, is confidential and she didn’t have a need to differentiate between levels of confidentiality.

Paula Glover, YCAO Legal Secretary

On Thursday, 12May2011 at approximately 0840hrs. I met with Paula Glover, YCAO Legal Secretary at YCAO, Prescott, Arizona. Glover told me the following:

During the time period in question, as listed in Williams’ motion, she was working in Victim Services as a Notifications Advocate, from 2003-2010. Glover described her duties at that time as one of regularly dealing with all types of confidential information related to cases she was assigned. She would then contact victims associated with those cases, and communicate any developments that they had a legal right to know. These communications would be in both electronic form or hardcopy mailings depending on the wishes of the victims. She would also communicate that information to the assigned Victim Advocate so that they could be present at any court proceeding they deemed necessary.

Glover said that, daily, she would use OnBase to access many records related to a number of cases. During that time, it was not unusual for her to handle records related to the DeMocker case. She specifically remembered handling DeMocker records and making notifications related to the DeMocker case, although she could not remember details about those records, as there was nothing extraordinary about handling DeMocker records relative to the other records she handled.

Glover said that she has never seen any cover sheets bearing the labels “Filed Under Seal”, or “Filed Ex Parte Under Seal”, either in electronic form in OnBase or in hardcopy form. Glover said she assumed that any documents that were labeled as such would not be accessible to her, although she is not familiar with the Court Clerk’s Office’s process. She said that she assumed someone, somewhere, controlled access to records and if she could view it in OnBase, she was meant to view it in order to perform her job. She also said that, frequently, as a Notifications Advocate, she would view an OnBase document more than once by referring back to it if she needed further information. She said it was also not unusual for her to refer back to a document to see what date the document was scanned by the Court Clerk’s Office, relative to the statutory requirements of notification.

Sean Paul, former YCAO Legal Secretary

On Thursday, 12May2011 at approximately 1034hrs. I spoke with Sean Paul, former YCAO Legal Secretary, by telephone. Paul told me the following:

During his employment at YCAO, he was assigned as legal secretary to former Deputy County Attorney Mark Ainley during Ainley’s prosecution of the DeMocker case, Bill Hughes, during Hughes assignment to the DeMocker case, and Joe Butner, during Butner’s prosecution of the DeMocker case. Paul said that his duties included staying

abreast of developments in the case, so as to better perform his duties. He said that it was not uncommon for him to view records in OnBase as part of his job, to be prepared for whatever his next task would be, per the prosecutor he was assigned to at any given time. Paul said it was common for him to deal with DeMocker records, although he never saw any records, either in OnBase or in hardcopy form that bore cover sheets marked "Filed Under Seal", or "Filed Ex Parte Under Seal". Paul said he was never directed to conduct research on DeMocker outside the scope of his duties, and he never researched the case on his own, outside the scope of his duties. Paul said that, as far as he was aware, if a document was "Sealed", he shouldn't have been able to view it in OnBase.

Pat Kavanaugh, YCAO Business Manager

On Thursday, 12May2011 at approximately 1600hrs. I met with Pat Kavanaugh, YCAO Business Manager, at the YCAO, Prescott. During our meeting, and in response to my questions, Kavanaugh told me the following information:

She has been in the position of Business Manager since January, 2011. Prior to that, she worked as a YCAO Paralegal. Kavanaugh said that, for a period of time, she was assigned to assist YCAO Deputy County Attorney Joe Butner, while he was assigned as the lead prosecutor to the DeMocker case, and Chief Deputy County Attorney Dennis McGrane.

Kavanaugh said that YCAO Paralegals Deb Cowell and Rhonda Grubb were the primary paralegals assigned to the DeMocker case, but that she assisted as needed based on her availability. Kavanaugh said that, during her involvement with the DeMocker case she saw hardcopies of cover sheets that bore the label, "Filed Under Seal", but in her experience it has not been uncommon for her to handle sealed records in other cases, as they typically aren't sealed from either party in a case, only the public and the media. However, she has never dealt with records which were "Filed Ex Parte Under Seal" in either electronic or hardcopy form.

Kavanaugh said that, to her knowledge, if a record was "Filed Under Seal" or "Filed Ex Parte Under Seal", it shouldn't be in the OnBase database. She understood the parameters of OnBase as, if a document had been "Filed Under Seal", it would not be viewable in OnBase, although either party to a case may have hardcopies of that particular record. Kavanaugh said she remembered at least one instance in the DeMocker case in which the Clerk of the Superior Court's Office, Yavapai County mistakenly sent information containing minute entries referring to ex parte/in camera communication between the defense counsel and Judge Lindbergh, to the YCAO. She also remembered seeing a hardcopy of a document that had been "Filed Under Seal", which had been attached to an e-mail that had been e-mailed to someone on the distribution list of the DeMocker prosecution team. She believed the e-mail came from DeMocker's defense team. She remembered that occurring around the time she was brought on to the team.

Kavanaugh said that, at no time, did anyone ever direct her conduct research outside of the scope of her assigned duties, nor did she conduct any research on her own outside the scope of her job.

Yavapai County Management Information Systems

On Thursday, 12May2011 at approximately 1130hrs. I met with MIS Programmer Supervisor Robin Schmidt and Programmer Analyst I Susan Murphy, at MIS on Fair Street, Prescott, Arizona. During our meeting, they told me the following:

Each Yavapai County department or office has a person assigned in-house as a "requester", who interfaces with MIS for the purpose of facilitating MIS's duties. The requester determines the "user groups" within the departments, and determines which "users" within the department are assigned to a specific "user group". The requester determines what level access each user group will have (i.e. rights to view, print, modify, etc.).

OnBase is an electronic database used by Yavapai County Human Resources, Yavapai County Finance, Development Services, and other county departments and offices. OnBase was implemented in 2005, beginning with the 'entering in' or scanning in of new Superior Court files in the Court Clerk's Office. As time allowed, older Superior Court case files were archived in OnBase. Initially, viewing privileges were given to employees of the Court Clerk's Office and to the Superior Court judges. The Superior Court and Court Clerk's Office later decided to provide viewing access to their documents in OnBase to the County Attorney's Office, the Public Defender's Office, and Adult Probation to avoid having to provide hardcopies to those offices, and to reduce operating costs. YCAO was given access in approximately 2008, with two (2) user groups. One, which had access to documents that were categorized, or assigned a keyword value of "Not Restricted", and another, which had access to documents categorized, or assigned a keyword value of "Restricted". Each of these keyword values was determined and applied by the Court Clerk's Office to records which they placed in OnBase. That system continues to be used as of the date of this report.

Documents in OnBase are retrieved via queries. Queries are performed by "keyword values". "Keyword values" are assigned to each document by the department to which the document/information 'belongs'. The department to which the information belongs, has 'owner's rights' and grants, limits, or denies access, e.g. the Court Clerk's Office may receive a request from the Yavapai County Attorney's Office "requester" asking for increased/expanded viewing rights for a specific "user group" composed of senior "users". The Clerk of the Court's Office may advise MIS that they will allow that level of access to that "user group", or that they don't wish to allow that level of access to that "user group". MIS then makes the changes as directed. The "requester" cannot come directly to MIS to ask for access to another department's documents, they must ask the

entity that owns the information. Everything is derived from a department's requester, and based on approval or disapproval by the owner of the information. If a county employee changes departments, it is up to the requester to notify MIS if that employee's status within the department has changed. E.g., if an employee of the YCAO with a specific level of access to OnBase information transfers to the Yavapai County Public Defender's Office, it is up to the YCAO's requester to notify MIS to remove that person's access to YCAO documents within OnBase.

Each department has three different classes of OnBase users...a Scanner, who can add/scan/enter information, an Administrator, who can manipulate documents in any way, including deletion, and a Viewer, who can view at predetermined levels of access, but not modify a document in any way.

The keyword values which the Court Clerk's Office assigns to their documents in OnBase are: "Not Restricted", "Restricted", and "Sealed". An employee in the Court Clerk's Office who scans a document into OnBase determines which keyword value will be applied to a scanned document. Various user groups within some County departments may be provided access to documents in one of those three categories, based on approval by the Court Clerk's Office. Currently the YCAO has one user group, with one level of viewing access approved for its users by the Court Clerk's Office..."Not Restricted". Previously, the YCAO had two (2) user groups until sometime in 2010. Group 1 had access to documents in "Not Restricted" category, and Group 2 had access to documents in "Restricted" category, such as mental health records, adoption records, minor abortions, and juvenile dependency, among others. Sometime in 2010 the Court Clerk's Office contacted MIS and asked that MIS eliminate the YCAO access to "Restricted" documents. The users in Group 2 were then consolidated into Group 1. Murphy said that when a department decides to change access to their information, she does not inquire why, she simply changes the access level as requested, which she did in this instance. I advised Murphy that YCAO continues to deal with cases involving mental health, juvenile dependency, and adoption issues and uses associated records. Murphy stated that the records the YCAO uses for those cases must be hardcopy documents, not documents retrieved from OnBase, as to her knowledge no one at YCAO has access to documents in OnBase that have those keyword values since she eliminated user Group 2 per the Court Clerk's request.

Schmidt and Murphy said that any County employee would, logically, operate in the OnBase environment with the assumption that they have been granted the level of access deemed necessary by their department's requester, and as approved by the department who "owns" the documents or information, and grants access or denies access.

I asked Murphy if the terms "Ex Parte", "Rule 15.9", or "Sealed Pleadings" had any bearing on how she did her job, or how MIS interfaced with OnBase or the County departments that utilize OnBase. She replied that those terms are not used in any way in relation to her duties, nor are recognized by her as keyword values. She said any terms used for keyword values are determined by the "owning" agency or department, and may or may not have a legal or official definition.

Rhonda Grubb, YCAO Paralegal

On Thursday, 12 May 2011 at approximately 1450hrs. I met with Rhonda Grubb, YCAO Paralegal at YCAO in Prescott. During our meeting, Grubb told me the following: She was assigned to the DeMocker case in January 2010 as a Paralegal. She described a portion of her job as Paralegal on the DeMocker case as involving a great deal of research in various public and closed databases, using hardcopies of documents provided by legal secretaries, and using documents e-mailed as attachments. Grubb said some of the records in the case may also be dropped off at the YCAO by a defense attorney, or handed directly to the prosecution team in the courtroom, by the defense team.

One of the closed databases which she uses on a regular basis is OnBase. I asked Grubb if she knew what her level of access was in OnBase, and she replied that she assumed everyone in the YCAO had the same level of access and did not know if there were varying levels of access. She said that she used OnBase with the assumption that if she could access a record in OnBase, she was supposed to be able to view that record. And, if she was able to view a document, it was because someone had determined she needed to access it to perform her job duties. Grubb was unaware if her level of access to OnBase has ever been modified, and said it appeared she had the same type of access on this date as she had when she began using OnBase. Grubb said that she accesses DeMocker-related records in OnBase at least twice daily. When she checks OnBase, she keys in on dates the documents were filed to determine if it is a record she is already aware of. She said the titles of the documents are too generic to differentiate between newly filed records, and records she has already seen.

In response to my questions, Grubb said that she regularly deals with documents and records in the DeMocker case which were labeled "Filed Under Seal". In relation to the DeMocker records, she specifically remembered handling records "Filed Under Seal" that dealt with legal issues being argued between defense and the State, that were sealed to prevent access by the general public and the media. She said that, typically, the documents were sealed at the request of DeMocker's defense attorney, e.g. documents that related to the source of the monies used to pay DeMocker's attorney's fees.

Grubb said that, at the time of our meeting, she remembered two records which contained a reference that they were "Filed Ex Parte", which the YCAO received from the Clerk of the Superior Court, Yavapai County. She said the records bore a notation by the Clerk's Office that copies were sent to the YCAO. She said that the records did not bear the cover sheets listed in Williams' addendum to his motion, but did contain a reference of their "Ex Parte" status.

Jack Fields, YCAO Deputy County Attorney, Supervisor, Civil Division

On 12May2011, at approximately 1600hrs. I spoke with YCAO Supervising Deputy County Attorney Jack Fields, by telephone. Fields told me the following:

He has been in his current position since February, 2007 and has been in the YCAO Civil Division since approximately February, 2006.

In his current position, he regularly accessed records and documents in OnBase that had a higher level of confidentiality than typically available to YCAO employees. Those records dealt with issues such as guardianship, probate, mental health files, and adoption, among other things. Fields added that the YCAO also deals with juvenile dependency issues, although that is handled by another Deputy County Attorney.

Fields said that no one has ever specifically discussed with him his level of access to records and he operated under the assumption that if he could view a document in OnBase, than he was cleared for that level of access and had a right to view it in order to perform his job duties. He said that, as far as he is aware he has had the same level of access since he entered the YCAO Civil Division, due to being assigned to mental health and fiduciary issues.

Fields has been involved in the DeMocker cases in what he described as a peripheral role. His involvement includes dealing with motions filed by DeMocker's defense attorneys which address the conditions of DeMocker's confinement in the YCSO Jail, DeMocker's access to computers and files while in confinement. DeMocker's access to visitors to the jail, and public records requests for information related to the DeMocker case. For example, Fields said that if the YCAO or the YCSO receives a public records request for information, he may review the request to determine if it is appropriate, if it should be honored, and under what conditions, and what information in the record should be redacted. Fields said that at least one public records request for information re: the DeMocker case dealt with a particular motion or motions. Fields said it was necessary for him to review the motions in question to determine what the YCAO's legal position may be on the disclosure of the information, e.g. what impact could result to the victims in the case, what impact release of the information may have on any ongoing investigation, or what impact it may have on the defendant.

In response to my questions, Fields said that he reviews both hardcopy files of records, as well as electronic records in OnBase as part of his job function as legal representative for the YCSO and as the Supervising Deputy County Attorney for the YCAO Civil Division. Fields deals with information related to many different cases on an ongoing basis, including DeMocker records.

I read the list of records attributed to Fields in William's motion and the addendum to that motion. Fields said that, at the time of the telephonic interview, he did not recall details of any specific records as listed in Williams' motion, because he had reviewed so many records in the DeMocker cases, although Fields questioned the Williams' entry re: "#13, 07/08/10: Supplement to State's Motion to Extend Time", as information proprietary to the YCAO, which Fields represented.

Fields said it was absolutely possible that he would have viewed any number and types of records related to the DeMocker case during the time frame listed by Williams. He said he searched for details related to a motion supplied by the media, in which they were looking for specific items related to the DeMocker case, and his job was to find that information and review it in relation to records requests, for the reasons listed above. Fields said that he researched documents in OnBase and other case management databases only to respond to motions for public records request issues and issues related to the YCSO. Fields said he does this regularly as part of his assigned job duties, on both the DeMocker case and many other cases. Fields said he is trying to answer the questions of, "What are the documents that have been filed, what do they say, and what are the parties' positions on issues ? "

Fields said that he did review ex parte documents in the DeMocker case. Fields said that most of the motions filed by DeMocker's defense attorneys which were filed ex parte dealt with the cost to DeMocker's defense to hire expert witnesses. Fields said those were issues he was not concerned with, or interested in, as those details did not go toward his determination of the YCAO's position on the release of information. Fields said he thought he could recall reporting to Paupore to that some of the DeMocker records he reviewed dealt with ex parte information dealing with cost issues, and Paupore replied he did not want to know any ex parte information, that any information of that type needed stay in the Civil Division.

Fields said that he routinely handles many cases with records which have been "filed under seal". Fields said it is not uncommon for a judge in a criminal case or a civil case to file records under seal, with both parties involved in the case having access to those records, but the general public or the media would not. Fields said it is not uncommon for each party to have 2 or more persons as part of a "team", so to speak, and copies of any documents or records "filed under seal" could be distributed to any number of people on a distribution list for a given party's "team".

Fields said that no one in the YCAO or YCSO ever directed him to access information which they knew or he knew would be off limits to him, and he never took it upon himself to research the case outside of the scope of his duties.

Kathy Durrer, YCAO Paralegal

On Monday, 16May2011 I met with YCAO Paralegal Kathy Durrer at the YCAO in Prescott, Arizona. During our meeting and in response to my questions, Durrer told me the following:

She currently works as a Paralegal in the Trial Team Division and has been a paralegal with the YCAO since 06May2002. She described her duties as generally dealing with major offenses, which cases she is assigned to at the inception of that case. The cases she works on typically require a great deal of record keeping, records research, handling

disclosure obligations, handling a high volume of documents, drafting State's motions, responding to defense motions, preparing a case for trial, preparing case notebooks, trying to anticipate who or what may be needed at trial, assisting through the trial process with technology, exhibits, coordinating witnesses, seeing the case through to sentencing, handling post-conviction pleadings and miscellaneous other duties as required.

Her research typically requires her to access records in electronic and hardcopy form from many different sources, including OnBase. She researches records in order to get a feel for the history of the case, who has been involved with the case, what prior pleadings have been filed, where the case is at the point she receives it, all in order to form the proper context for any responses or to construct an accurate pleading. Durrer said she typically accesses OnBase on what is probably a daily basis. She uses OnBase to insure that she is aware of all records related to a given case to which she is assigned. She said that, prior to having access to OnBase, it was common for the paralegals at the YCAO to spend hours at a time in the courthouse poring over records to research a case. Durrer said that no one has ever discussed her level of access in OnBase with her, and she doesn't remember having ever received training in OnBase. She said that she vaguely remembers accessing records in OnBase, possibly in a current case she is assigned to (Ray), and seeing a scanned record with the handwritten word "Sealed" or something similar. She did not remember ever having seen a record like that related to DeMocker. She said that, in this instance, she backed out of the OnBase record and eventually retrieved the record using another method.

Durrer she has repeatedly dealt with and handled and researched documents and records that have been "Sealed" by a judge. She said that a document is typically sealed from the general public or the media, not the two parties in the case. Durrer said there are legal rules related to sealing records, and that courts work from a premise that all case records are "unsealed", unless a motion is filed requesting that they be sealed.

In response to my questions, Durrer said that a party to a case (e.g. the State and the Defense) can consist of any number of people involved with a case, who has any level of involvement with a case, at any given point in the case. She described this as legal clerks who handle records or document intake and route them to legal secretaries or paralegals, or attorneys assigned to the case, to any detectives or investigators who are involved with the case at any stage of the investigation or prosecution.

She described her involvement in DeMocker as "limited", although because paralegals back each other up she did do some work on the case. Durrer said that if a paralegal is in trial on a case, and an emergency issue arises in that case that requires research, a coworker (paralegal) who is in the office rather than in trial may deal with that issue. She said this was the case with her involvement in the DeMocker case. Durrer said that she remembers that, at one point, when the case was in trial, she was asked to assist in preparing an exhibit. This particular task involved redacting information in a record so the information could be used in court. She also remembered drafting a response to DeMocker's defense attorney based on their request for information related to an interview with another attorney (Kottke). Durrer could not recall accessing any

electronic records or hardcopy records outside of those particular tasks. She could not recall using OnBase related to her tasks in DeMocker. She could not recall that she had any further involvement with the DeMocker case.

Durrer could not recall seeing the records which were listed by Williams as being viewed by her ("Order for Rule 15.9"). She said she could only recall ever responding to one other order of that type, on an Aggravated Assault case in which an indigent defendant represented themselves, was convicted, and applied for post-conviction relief to obtain laboratory testing on a piece of evidence. Durrer said that, in her experience, it was not common for records dealing with a Rule 15.9 Appointment to be an ex parte issue. She said that, ordinarily, in a non-ex parte environment, an order would be in response to a motion and in this instance, the State would have 10 days to respond or to notify the court that they would not be responding. She said that, with a response to an order of that sort, a paralegal is typically the person on a trial team who would draft a response to an order if a response is made. So that, while it would be within her purview to handle a response to an order of that sort, she did not remember having to research a record like that in relation to her duties in DeMocker.

Durrer briefly reviewed Williams' motion and the addendum and stated that it appeared that some of the records listed appeared to have been counted more than once, and referred to the same document more than once. Durrer also questioned Williams' inclusion of "'#13" under Field's name in the body of the motion, i.e. "Supplement to State's Motion to Extend Time", as she said it appeared that was information that was actually produced/generated/filed by YCAO. She said that the Jury Messages were also proprietary to YCAO, and questioned Williams' inclusion of those under Fields' name. Durrer said that, to her knowledge, each of the people listed in Williams' motion and addendum had specific job duties related to the actions listed. She also said that it was not uncommon (e.g. the case she is currently assigned to, "Ray") for the case to file a motion to seal documents presented by the Defense. She indicated she would not be surprised if some of the records listed in Williams' motion and addendum had been filed by the State and that, in fact, Grand Jury records are part of the YCAO case file on any given felony (per the listing in Williams' addendum re: Carol Landis viewing Grand Jury Proceedings transcript).

Durrer said that no one ever directed her to conduct research on DeMocker outside of the scope of her normal job duties, and she never took it upon herself to conduct any research on DeMocker outside of the requirements of her job duties. She flatly stated she would not have the time.

Deb Cowell, YCAO Paralegal

On Monday, 16May2011 I met with YCAO Paralegal Deb Cowell at the YCAO, Prescott. Cowell told me that she had been working as a Paralegal at the YCAO since July, 2004. She had been working on the DeMocker case prior to the case being charged, sometime between July, 2008 and October, 2008.

Cowell described her job as a Paralegal assigned to the DeMocker case as being tasked with accumulating all disclosures, accumulating all evidence submitted by the YCSO, developing the first witness list in the case and communicating all of that information to the attorneys assigned to the case. She said that she also drafted responses to motions and drafted initial motions that the State filed.

She said that she initially began using OnBase as soon as it became available to the YCAO. Cowell said she remembered that the Court Clerk's Office began scanning documents into OnBase around 2005. Prior to having access to OnBase, she had access to a different database she referred to as "Aztec", but as soon as the Court Clerk's Office provided access to OnBase, she began using that database. Cowell said that used OnBase on virtually a daily basis to conduct research on all cases to which she was assigned, including DeMocker. Cowell looked at the list of documents associated with her name in the addendum to Williams' motion and said it would be normal for her to view, or view and print, documents like those during her research for the DeMocker case.

Cowell said that she had access to records related to DeMocker on a regular and constant basis throughout her assignment to the case. She said that she regularly received hardcopies of documents from DeMocker via U.S. mail from a Phoenix, Arizona-based office, and that those documents were copies of records that had been previously submitted to the court and scanned into OnBase by the Court Clerk's Office and which she would have already viewed by virtue of her access to OnBase. Cowell said that, conversely, at times hardcopies of certain documents would be given to her, provided by DeMocker, before the Court Clerk's Office scanned the documents into OnBase. Cowell said the YCAO received hardcopies of documents directly from DeMocker during courtroom proceedings as well as through the U.S. Mail, and that hardcopies would be placed in the YCAO mailbox at the Prescott Courthouse, or she would receive e-mails with .pdf, scanned documents as attachments.

Cowell said that her job commonly required her to access records of older cases and, rather than requesting boxed of records related to a particular case from Yavapai County Records Management, she typically searches for, or prints, those records in or from OnBase rather than conducting hand searches of hundreds of hardcopy documents in boxes of case files. Cowell said that, at times, she has observed that a particular document which should be in the OnBase case file is not available. She said that, in those instances, she contacts the Court Clerk's Office and advises them of what she has observed and she has been advised that that particular file was inadvertently mislabeled, and the Court Clerk's Office would have to change the "coding" on that document, to her knowledge. (This appears to be consistent with the process explained to me by MIS on 12May2011, wherein keyword values are assigned to records scanned into OnBase, by the owner of those records, that may make them viewable by various user groups, and limit their accessibility to other user groups in OnBase.) I asked Cowell to give me an example of what she was referring to. She said the last record that this occurred with was a "Judgement and Sentencing" document which was searching for in a case file. She knew the hardcopy had been filed with the court, but she could not find it in OnBase.

She contacted Court Clerk's Office and advised them she could not find an electronic copy of what she knew had been filed with the court. The Court Clerk's Office later told her that document had been mislabeled, the labeling had been corrected, and it was now viewable by Cowell. Cowell explained to me that she understood the process at the Court Clerk's Office to involved different "...coding..." for various types of documents. She said she never learned what their process was, that she only uses names, titles, or labels of the types of documents she commonly deals with and is able to recognize whether or not they are in an area of OnBase which she knows she should be able to access. Cowell said she has also found documents "...mis-scanned", relating to particular defendant case documents found in a different and unassociated defendant's OnBase file. She said that, when "...I caught errors like that, and I just call the Clerk's Office and say, 'This is in the wrong place', and they're able to correct it...just like our things get mis-filed." I asked Cowell if she had ever discovered that situation during her assignment to the DeMocker case, and she said she had not.

I showed Cowell a photocopy of a cover sheet labeled, "Filed Under Seal" in the addendum to Williams' motion and asked her if she had ever seen a document like that in OnBase. She said that she had seen a coversheet like that many times, but did not know if she had seen it in OnBase. She said that many documents re: DeMocker had been "Filed Under Seal" which were sealed from the public and the media, and that when the YCAO received hardcopies of records from Steven DeMocker which had been "Filed Under Seal", the original coversheet that I showed her a photocopy of was usually orange paper or cardstock. Cowell said all of the DeMocker-related documents which she handled, viewed, printed, or filed which had been "Filed Under Seal" by order of a judge, had been sealed from the public and/or the media. I also showed Cowell a photocopy of the cover sheet in the addendum to Williams' motion labeled, "Filed Ex Parte Under Seal" and asked her if she had received, handled or seen any records containing a cover sheet with that title. She said she had not. She said, however, that she did see records in OnBase that she was surprised she was able to access, particularly 15.9-related records wherein DeMocker applied to the court for state funds to pay for expert witnesses. Cowell said that the records she saw that fit that category were filed in OnBase only as a typical motion, and bore no cover sheet, title or label indicating it was an ex parte record. Cowell said the YCAO "...knew..." DeMocker was "...going to go that direction..." because DeMocker, in an open hearing, requested a "15.9" hearing. She said that, to her recollection and understanding, that particular hearing would have allowed DeMocker to tell the judge, "...my client is underfunded, we need this money, so please give it to him." Cowell said that, subsequently, she saw a record in OnBase in the format of a typical, unsealed/non-ex parte motion related to that hearing. She said she also saw a similarly formatted record regarding a request, by DeMocker, for state funds to pay a paralegal. Cowell said that, to her knowledge, those records and others of that type, were intended to be sealed from the public and the media, and not from YCAO. Cowell said that, in her experience as a paralegal assigned to major cases, those were not the types of issues that were normally discussed or decided in ex parte hearings. Cowell said that she thought she also remembered seeing a DeMocker-related minute entry in OnBase that referred to an ex parte hearing, although Cowell said that, because of it's appearance as a

typical minute entry/court synopsis of a proceeding, she did not recognize it as ex parte information until she had opened it and printed it as a working copy of case paperwork. Cowell said that she has received, accessed, or handled documents and records which had been "Filed Under Seal" in previous cases, but no other case she has ever worked on ever generated the numbers of documents which were "Filed Under Seal" or "Filed Ex Parte Under Seal" that the DeMocker case had.

Cowell said that, at no time, has anyone ever directed her to research records related to the DeMocker case outside of the scope of her normal job duties. She also said that, at no time, has she ever researched records related to the DeMocker case on her own, outside of the scope of her normal job duties. I asked Cowell if she had handled records related to the DeMocker case any differently than she did any other cases, and she said she did not. However she said that, coinciding approximately with the inception of the DeMocker case (2008), the Court Clerk's Office began transitioning from providing the YCAO hardcopies of case records, to granting access to scanned documents in OnBase. So, the format of the DeMocker records which she handled changed around the time she was assigned to the case.

I asked Cowell if she had ever noticed a change in her access to documents during her assignment to the DeMocker case. She said that she did remember an instance like that, that it related to DeMocker records, and that it was the record of the motion related to DeMocker's ex parte 15.9 hearing re: a request for state funds to pay for a paralegal. She said that, at one point she had access to the record and, later, she did not have access to the record. She said that she assumed the Court Clerk's Office realized that it was the category of record (ex parte) that they normally limited access to, although, Cowell said, it wasn't the type of record that was normally ex parte information.

I asked Cowell how she determined which records to view and read in OnBase, and which records to print from OnBase. She said that she typically uses the title of a record to determine what to open, in order to determine what to print. She then viewed only the first page before deciding to print the entire document, or to decide that she did not need to print the document. She said that she did not read every page in the entire document before printing. She would read the document at a later time if she needed to learn it's content. She said she thought she remembered that she printed a record related to DeMocker's 15.9 request re: funds for a paralegal or expert witnesses as part of a group printing of several documents, not knowing what the content of the document was until later. She said that, because she could see the documents were privileged information, she later shredded those documents. Cowell said that, in OnBase formatting, records show as general titles and file dates, with no indication of specificity of content. She said that, in the DeMocker case, because there was an unusual number of motions filed and an unusual number of disclosures, her common practice was to open the first page of a document to determine if it was a record she had already viewed and printed, or if it was document that she needed to print for reference and research. This was the only way she had of tracking records, at the speed and volume they were being generated, to insure YCAO records had been scanned into OnBase, and to insure that she stayed abreast of records generated by DeMocker.

Tony Camacho, Victim Services, Notifications Advocate

On Tuesday, 17May2011 I met with Tony Camacho, YCAO Victim's Services Restitution Case Worker, although he said the majority of his time is spent as a substitute Victim Notification Advocate. He said that he has been working for YCAO since about October, 2007. He described his current job as Restitution Case Worker as gathering information about individual or entity victim financial losses as a result of a crime. He puts the information into MS Excel spreadsheet format as a summary, so that prosecutors can use that information to try to obtain financial restitution for victims. He described his additional duties as a substitute Victim Notification Advocate as contacting victims by their preferred method of contact (letter, e-mail, or phone call) with locations/dates/times of upcoming court hearings related to their case, or trial locations/date/times. Camacho said he gets the information that he provides to victims from OnBase in the form of electronic minute entries. He said that, prior to the implementation of OnBase, legal clerks would go to the courthouse and pick up hardcopies of records, bring them back to the YCAO, and print/collate copies for distribution to different individuals involved with a given case. He said he remembered OnBase being implemented at least a year and a half prior.

Camacho said that, initially with OnBase, he printed out all of the minute entries and then referred to the physical copies of the minute entries he printed in order to compose letters on his computer for the various victims he was in communication with.. He said effort was later made inhouse to go "paperless", and he now has two computer monitors on his desk top. This allows him to view a minute entry on one monitor, and view/modify/compose his letter on his second monitor. Therefore, he rarely needs to print minute entries any more.

Camacho said that, per statute, Victim Services is required to provide victims with a minimum 5 day notice of upcoming proceedings on their cases. He said that, at times, a minute entry may show an upcoming proceeding scheduled much sooner than that. Camacho said that, typically, he will notify the Victim Advocate assigned to that case of the "short set" date, and the Victim Advocate will make telephonic contact with the victim to speed up the notification process. Camacho said that, sometimes, he will make telephonic contact with victims if the assigned Victim Advocate is unavailable.

I asked Camacho what information in a minute entry he needs to glean for his job duties. He said that he has to read the entire minute entry related to his cases in order to determine what detail may be important to victims. He said that cases may be dismissed or trials may be vacated, or trial dates may be changed...he said pertinent information may not be readily recognizable or visible, and so he reads the entire document.

Camacho said he learned a great deal about minute entries in his previous position as Bailiff for former Judge Sterling. He said that, during that time, he interacted with the Court Clerk's Office on a regular basis to retrieve case files for Judge Sterling's calendar for the upcoming week, to pull pleadings, submit minute entries that had a "rush" status, to bring in evidence to the court for evidentiary hearings or trials, and many other duties. He said that, when he was a Bailiff, he primarily used a database called "Aztec" and on a limited basis with OnBase. I asked him if, during his time as Bailiff, he had observed any records in OnBase which had been mis-labelled or mis-filed. He said that, more than once during that time, he found minute entries scanned into the wrong electronic case file or with the wrong case number. He said it happened enough times that the supervisors in the Court Clerk's Office asked him to alert them any time he observed it so they could fix the problem. He said he felt bad bringing them all of the errors that he found, but he "...ran into a lot of those." He said he did not understand how anyone could have viewed documents they were prohibited from viewing unless the Court Clerk's Office mistakenly included them in accessible documents when they shouldn't have

In response to my questions, he told me that during his assignment as a Notification Advocate, he handled records and contacted victims directly related to the DeMocker case. He said that, any time he took any action related to a victim in any case, he made notations in the YCAO proprietary database, "P2". At the same time, information about the victims' preferred method of contact was found in P2, as special instructions related to the case. Camacho said that he thought he remembered that P2 victim records related to the DeMocker case had special instructions that, at times, all minute entries related to the case were to be printed out and forwarded to the assigned Victim Advocate, Marie Higgins for notification of victims. Camacho said each victim case had different special instructions, and it wasn't necessarily unusual to have special instructions of that type. If Higgins wasn't available, special instructions were to advise her of the minute entry but handle victim notification per instructions in P2.

I showed Camacho the list of documents associated with his name in the addendum to Williams' motion. He said that, due to the volume of minute entries he viewed, read, and corresponded about on a daily basis, he could not specifically remember any minute entries or documents like those described by Williams'. He said he only remembered that there were special instructions related to victims in the DeMocker case, and he adhered to those special instructions. He remembers that many of the records he viewed, handled, corresponded about, or forwarded to a Victim Advocate were DeMocker case records, although he couldn't remember anything specific about any of the records.

I showed Camacho photocopies of cover sheets included in the addendum to Williams' motion ("Filed Under Seal" and "Filed Ex Parte Under Seal") and asked him if he has seen any scanned documents of that type in OnBase. He said those documents or coversheets were completely unfamiliar to him and he didn't remember seeing them before, associated with any case.

In response to my questions, Camacho said that no one ever directed him to conduct any research on the DeMocker case outside of the scope of his normal duties, nor did he

conduct any research of his own on the DeMocker case outside of the scope of his duties. He said that he did not handle DeMocker case records or minute entries any differently than other major cases which had special instructions re: victim notification.

I asked Camacho if his access to OnBase records has changed. He said that he has noticed some changes, in that some minute entries which he needs access to and normally has access to, are unavailable to him. He said that, at times, he has found that the summaries which he has prepared for the prosecutors to obtain victim compensation are "Sealed" to his access. He said he could not understand how documents which he has prepared and which the YCAO is going to use in court could be sealed to him. He said that he has talked to Karen Wilkes, who he knows as a supervisor over scanning duties at the Court Clerk's Office about the issue. He said that Wilkes has told him to e-mail her or call her with specific case numbers to which there is a problem with his access to records.. Camacho said he feels there may sometimes be a problem with new clerks at the Court Clerk's Office who are in training, scanning documents, during which they may not properly "click" or "unclick" the "Restricted" classification of a document to allow proper access to representatives in Victim Services who legally need access.

I asked Camacho if he had ever seen instances of records being unintentionally or mistakenly labeled "Unrestricted" when they should have been "Restricted". He said that, when he was a Bailiff for Judge Sterling, he did become aware of instances when Grand Jury minute entries were available for viewing in OnBase. He said he immediately notified the Clerk of the Court in each instance and they remedied the situation by applying proper access limitations. I asked Camacho if it appeared, in his experience, that the issues he was aware of were related to training issues with new personnel and he said it was. (It should be noted that Camacho honorably retired from the United States Marine Corps as an NCO/Legal Officer). He said that, based on his experience, it was, and that the Court Clerk's Office supervisors told him the same thing, during that time. He said they told him that sometimes new clerks in training make mistakes related the scanning and categorization of court records.

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Kurt Olsen, Victim Services, Technology Unit

On Tuesday, 17May2011 I met with Kurt Olsen, YCAO Victim Services, Victim Advocate. Olsen told me that he has worked for the Yavapai County Attorney's Office as a Victim Advocate since May, 2007, although currently he is assigned to the Technology Unit.

Olsen described his job as Victim Advocate as consisting of being responsible for staying in contact with victims on case to keep them apprised of any developments in the case, educating them about the legal system as it relates to their case, interfacing with the victim on behalf of the prosecutor, facilitating restitution or compensation and, in Olsen's

case as a bilingual English/Spanish speaker, advocating for non-English speaking victims. Olsen said it is not uncommon for Victim Advocates to assist each other on cases which have simultaneous hearings or multiple, or a large number of victims. In addition, Victim Advocates may fill in on cases in which the primary Advocate is unavailable. Olsen said that, currently, his primary assignment is with technology as it relates to cases, e.g. Spanish-English translation, evidentiary electronic media, computer systems, software, electronic evidence presentation, technology operation relating to courtroom presentation, and other technological issues related to criminal cases.

I asked Olsen if he knew what his level of access in OnBase was, and he said that he had viewing access to Rule 11 issues, juvenile dependency issues, and adoption issues, although he doesn't frequently have a reason to access those types of documents. He said that, generally, he has a much higher level of access to confidential information than the public. He said that he is not aware that his access in OnBase has recently changed, outside of a current, unrelated project he is working on which requires him to have an access level that allows him to scan and manipulate YCAO data.

Olsen said that, as a Victim Advocate, he used OnBase to view all documents related to a criminal case which could possibly be of assistance in explaining to a victim what is occurring with their case. Or, he may have electronically forwarded a document to a victim, which they would be entitled to, that explained any developments in the case, e.g. a plea document, sentencing documents, etc. He said a victim may either be told what is contained in a specific OnBase record or be provided a hardcopy or electronic copy as an e-mail attachment. This required a certain level of research within the case records that are available within OnBase to determine what may be needed. Olsen said that OnBase uses a system of indexing, so that documents can be searched for by type, or by date if a user knows the date of filing. Olsen said it is not uncommon for victims in any case to want any documents related to pre-trial hearing notes taken by a Judicial Assistant that shows who was present and what happened, any motions, any plea agreements, etc. This requires the Victim Advocate to stay abreast of records as they are scanned into OnBase.

Olsen said he was not assigned to the DeMocker case as a Victim Advocate, however he was assigned to the DeMocker case in a technology role to assist Paralegals in preparing media (evidentiary audio recordings and video recordings, evidentiary photographs, transferring digital data from disc to network drive, etc.) for courtroom presentation. He said it was possible that he may have covered a hearing for the assigned Victim Advocate, but he wasn't sure. He said that, if that were the case, it's also possible he may have utilized OnBase to access DeMocker case-related records to communicate pertinent information to victims in the case. Again, he could not specifically remember if that happened or not.

I showed Olsen the document listed under his name in Williams' addendum to his motion and asked him if he recognized it. He replied that not only did he not recognize it, he did not know what a Rule 15.9 was. I showed Olsen the photocopies of the cover sheets included by Williams in the addendum to his motion (labeled "Filed Under Seal" and "Filed Ex Parte Under Seal") and asked him if he had ever seen any documents bearing

those cover sheets, but he said he had never seen cover sheets like those included in Williams' motion.

I asked Olsen if, during his use of OnBase, he had ever observed any records which, in his opinion, were mis-labelled or mis-filed. He said that he had, and he said he had observed that a record had been entered, or been connected to, the wrong defendant file in OnBase. He said he called the Court Clerk's Office and advised them of what he'd found, and they told him they would fix it. I asked him how many times that occurred, and he said at least 2 times. Olsen related that he was familiar with the process used by the Court Clerk's Office in OnBase, and generally described it as permission to view a given document being granted by the Court Clerk's Office, via their own system of indexing the data that they manage. Olsen said that he is aware of some recent problems related to Victim Services personnel losing access to types of documents in OnBase. A special request had to be made to the Court Clerk's Office to resume the previous level of access to the documents in question.

In response to my questions Olsen told me that, at no time, did anyone ever direct him to conduct any research on DeMocker OnBase records outside of the nature of his job duties. And, at no time did he conduct any research on his own in DeMocker OnBase records outside of the nature of his job duties.

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Yavapai County Management Information Systems OnBase synopsis

OnBase is a document management system. It has multiple levels of security which can be very granular depending upon the desired level of access restriction. *Document Types*, *Keywords*, *User Groups* and *Users* are defined and assigned based on the requester's direction. A requester is a department head, elected official or their designee.

Document types are basically a collection of documents as defined by the requester. *Document types* consist of documents that have been scanned or imported, typically by department or office staff. The requester will communicate as to which users may view which *document types*.

Keywords are used to define the documents that are scanned or imported. *Keywords* are used for retrieval purposes. The individual that scans or imports the document is responsible for applying all the keywords.

User groups are a collection of users that have access to certain *document types* which may have "product" rights to view, print, modify, etc. These *user groups* are setup based on instructions from the requester. The requester defines the *user groups'* rights and membership. They also determine what security keywords, if any, are added to that *User Group*. Meaning, the *user group* can be restricted to see only certain documents based on *keyword* values.

Users are setup within OnBase. Each user that has access to log into OnBase is setup with a unique username and password. Viewing HR and Finance documents are restricted based on the users own employee ID. This allows the employee to only view their own HR or Finance documents.

Each time a user logs into OnBase a transaction history is created based upon what is viewed, searched, printed, etc. Only authorized users can view the transaction logs.

Each document that is in the OnBase system also has a transaction history of who viewed, searched, printed, etc. that document, and when.

Custom Queries - Prescott CA Court Doc Search

My Queries

Custom Queries

COC - Case Number Search

Prescott CA Court Doc Search

Prescott VS Court Doc Search

Verde CA Court Doc Search

Verde VS Court Doc Search

Query History

Yavapai County Attorney Prescott

Document Retrieval Search

Document Date:

From: 05/25/2011

To: 05/25/2011

Click on the search button. To print, save or email, highlight all entries and right click.

If documents were scanned over a weekend or a holiday, you can search for them by having the last business date in the From: box and yesterdays date in the To: box

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RESULTS:

Screen 1:

Case Number (30+)	Document Title	Filing Date	Party Type
P1300CR15292	ORDER: ORDER	05/25/2011	D
P1300CR20018720	ORDER: REASSIGNMENT OF JU...	05/25/2011	D
P1300CR20020233	ORDER: REASSIGNMENT OF JU...	05/25/2011	D
P1300CR20030025	MINUTE ENTRY: HEARING	05/23/2011	D
P1300CR20041221	MINUTE ENTRY: HEARING	05/23/2011	D
P1300CR20070245	MINUTE ENTRY: HEARING	05/23/2011	D
P1300CR20070437	ORDER: REASSIGNMENT OF JU...	05/25/2011	D
P1300CR20070972	ORDER: REASSIGNMENT OF JU...	05/25/2011	D
P1300CR20071342	ORDER: REASSIGNMENT OF JU...	05/25/2011	D
P1300CR20071348	ORDER: REASSIGNMENT OF JU...	05/25/2011	D
P1300CR20080719	MINUTE ENTRY: VIOLATION HE...	05/24/2011	D
P1300CR20081282	ORDER: REASSIGNMENT OF JU...	05/24/2011	D
P1300CR200901078	MINUTE ENTRY: PRETRIAL CO...	05/23/2011	D
P1300CR200901084	ORDER: REASSIGNMENT OF JU...	05/25/2011	D
P1300CR20090119	ORDER: CORRECTING CLERIC...	05/20/2011	D
P1300CR200901275	ORDER: WARRANT	05/24/2011	D
P1300CR200901275	WARRANT: ISSUED	05/24/2011	D
P1300CR20090617	ORDER: ORDER	05/25/2011	D
P1300CR20090760	ORDER: REASSIGNMENT OF JU...	05/25/2011	D
P1300CR201000007	ORDER: ORDER	05/25/2011	D
P1300CR201000515	ORDER: RESETTING	05/25/2011	D
P1300CR201000798	ORDER: ORDER	05/25/2011	D
P1300CR201000834	MINUTE ENTRY: CASE MANAGE...	05/23/2011	D
P1300CR201000867	MINUTE ENTRY: EVIDENTIARY ...	05/20/2011	D
P1300CR201001030	MINUTE ENTRY: CHANGE OF P...	05/24/2011	D
P1300CR201001030	PLEA AGREEMENT: PLEA AGRE...	05/24/2011	D
P1300CR201001058	ORDER: REASSIGNMENT OF JU...	05/24/2011	D
P1300CR201001194	MINUTE ENTRY: PRETRIAL CO...	05/23/2011	D
P1300CR201001224	MINUTE ENTRY: MINUTE ENTRY	05/23/2011	D
P1300CR201001253	ORDER: CONTINUING	05/25/2011	D
P1300CR201001281	MINUTE ENTRY: HEARING	05/24/2011	D
P1300CR201001339	MINUTE ENTRY: PRETRIAL CO...	05/23/2011	D

Previous Results

Next Results

Options

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Screen 2:

Desktop Document Results			
Case Number (100+)	Document Title	Filing Date	Party Type
P1300CR201100347	MINUTE ENTRY: CASE MANAGE...	05/23/2011	D
P1300CR201100350	MINUTE ENTRY: CASE MANAGE...	05/23/2011	D
P1300CR201100351	MINUTE ENTRY: STATUS CONF...	05/23/2011	D
P1300CR201100364	MINUTE ENTRY: CASE MANAGE...	05/23/2011	D
P1300CR201100401	ORDER: RELEASE ORDER	05/24/2011	D
P1300CR201100479	NOTICE: NOTICE	05/25/2011	D
P1300CR980502	ORDER: ORDER	05/25/2011	D
P1300CR980775	ORDER: ORDER	05/25/2011	D
P1300CR980826	ORDER: ORDER	05/25/2011	D
P1300CR980852	ORDER: REASSIGNMENT OF J.U...	05/25/2011	D
P1300JV20060111	MINUTE ENTRY: DETENTION H...	05/22/2011	M
P1300JV20060134	MINUTE ENTRY: DRUG COURT	05/16/2011	X
P1300JV20060134	MINUTE ENTRY: DRUG COURT	05/23/2011	M
P1300JV20070148	MINUTE ENTRY: ORDER TO SH...	05/16/2011	X
P1300JV20070148	MINUTE ENTRY: ORDER TO SH...	05/16/2011	X
P1300JV20070148	ORDER: ORDER	05/16/2011	X
P1300JV20070148	ORDER: ORDER	05/16/2011	X
P1300JV20080008	MINUTE ENTRY: DRUG COURT	05/23/2011	M
P1300JV20080292	MINUTE ENTRY: ORDER TO SH...	05/16/2011	X
P1300JV20080292	ORDER: ORDER	05/16/2011	X
P1300JV200900202	MINUTE ENTRY: DRUG COURT	05/16/2011	M
P1300JV200900202	MINUTE ENTRY: DRUG COURT	05/23/2011	M
P1300JV20090070	MINUTE ENTRY: DRUG COURT	05/16/2011	M
P1300JV20090070	MINUTE ENTRY: DRUG COURT	05/23/2011	M
P1300JV20090133	MINUTE ENTRY: ORDER TO SH...	05/16/2011	X
P1300JV20090133	ORDER: ORDER	05/16/2011	X
P1300JV20090157	MINUTE ENTRY: DETENTION H...	05/19/2011	M
P1300JV20090004	MINUTE ENTRY: ADVISORY	05/16/2011	M
P1300JV201000008	MINUTE ENTRY: J.U.S.T. COURT	05/20/2011	M
P1300JV201000008	ORDER: J.U.S.T. COURT	05/20/2011	M
P1300JV201000014	MINUTE ENTRY: ORDER TO SH...	05/16/2011	PA
P1300JV201000014	ORDER: ORDER	05/16/2011	PA

Previous Results Next Results Options

Screen 3:

Desktop Document Results			
Case Number (100)	Document Title	Filing Date	Party Type
V1300CR201180185	ORDER: VACATING	05/25/2011	P
V1300CR20090186	ORDER: DENYING	05/25/2011	D
V1300JV200980147	MINUTE ENTRY: DETENTION H...	05/22/2011	M
V1300JV200980208	MINUTE ENTRY: DETENTION H...	05/21/2011	M
V1300JV201080058	MINUTE ENTRY: DETENTION H...	05/20/2011	M
V1300JV201080076	MINUTE ENTRY: DETENTION H...	05/21/2011	M
V1300JV201080111	MINUTE ENTRY: DETENTION H...	05/19/2011	M
V1300JV200880101	MINUTE ENTRY: DETENTION H...	05/20/2011	M

Previous Results Next Results Options

Custom Queries - Verde CA Court Doc Search

My Queries
Custom Queries

- COC - Case Number Search
- Prescott CA Court Doc Search
- Prescott VS Court Doc Search
- Verde CA Court Doc Search
- Verde VS Court Doc Search
- Query History

Yavapai County Attorney Verde

Document Retrieval Search

Document Date:

From:

To:

Click on the search button. To print, save or email, highlight all entries and right click.

If documents were scanned over a weekend or a holiday, you can search for them by having the last business date in the From: box and yesterdays date in the To: box

If you need assistance
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RESULTS:

Screen 1:

Desktop Document Results			
Case Number (42)	Document Title	Filing Date	Party Type
P1300CR20060243	ORDER: AMENDING	05/25/2011	D
P1300CR200901867	MINUTE ENTRY: INITIAL APPE...	05/25/2011	D
P1300JV20090151	MINUTE ENTRY: DRUG COURT	05/23/2011	M
V1300CR201080049	ORDER/UNDER ADVISEMENT R...	05/25/2011	D
V1300CR201080303	MINUTE ENTRY: STATUS CONF...	05/23/2011	D
V1300CR201080408	MINUTE ENTRY: EVIDENTIARY ...	05/24/2011	D
V1300CR201080408	MISCELLANEOUS: EXHIBIT LIST	05/24/2011	D
V1300CR201080584	ORDER: WITHDRAW COUNSEL	05/24/2011	D
V1300CR201180082	MINUTE ENTRY: HEARING	05/23/2011	D
V1300CR201180136	MINUTE ENTRY: HEARING	05/23/2011	D
V1300CR201180149	MINUTE ENTRY: HEARING	05/23/2011	D
V1300CR201180167	MINUTE ENTRY: HEARING	05/23/2011	D
V1300CR201180188	MINUTE ENTRY: CASE MANAGE...	05/23/2011	D
V1300CR201180189	MINUTE ENTRY: CASE MANAGE...	05/23/2011	D
V1300CR201180189	NOTICE: NOTICE	05/23/2011	D
V1300CR201180190	MINUTE ENTRY: CASE MANAGE...	05/23/2011	D
V1300CR201180201	MINUTE ENTRY: CASE MANAGE...	05/23/2011	D
V1300CR201180201	NOTICE: NOTICE	05/23/2011	D
V1300CR201180202	MINUTE ENTRY: CASE MANAGE...	05/23/2011	D
V1300CR20080049	MINUTE ENTRY: APPLICATION ...	05/23/2011	D
V1300CR820010366	MINUTE ENTRY: PETITION - DE...	05/23/2011	D
V1300CR820030703	MINUTE ENTRY: APPLICATION ...	05/23/2011	D
V1300CR820030703	MISCELLANEOUS: EXHIBIT LIST	05/23/2011	D
V1300CR820040039	MINUTE ENTRY: APPLICATION ...	05/23/2011	D
V1300CR820040480	NOTICE: HEARING	05/24/2011	D
V1300CR820040704	MINUTE ENTRY: STATUS CONF...	05/23/2011	D
V1300CR820050527	ORDER: TERMINATE/DISCHAR...	05/24/2011	D
V1300CR820050710	MINUTE ENTRY: APPLICATION ...	05/23/2011	D
V1300CR820050754	MINUTE ENTRY: STATUS CONF...	05/23/2011	D
V1300CR820060009	MINUTE ENTRY: APPLICATION ...	05/24/2011	D
V1300CR820070436	ORDER: GRANTING	05/25/2011	D
V1300CR820070578	ORDER: WARRANT	05/25/2011	D

Previous Results Next Results Options

(Continuation of Screen 1):

Desktop Document Results			
Case Number (C)	Document Title	Filing Date	Party Type
V1300CR201180149	MINUTE ENTRY: HEARING	05/23/2011	D
V1300CR201180167	MINUTE ENTRY: HEARING	05/23/2011	D
V1300CR201180188	MINUTE ENTRY: CASE MANAGE...	05/23/2011	D
V1300CR201180189	MINUTE ENTRY: CASE MANAGE...	05/23/2011	D
V1300CR201180189	NOTICE: NOTICE	05/23/2011	D
V1300CR201180190	MINUTE ENTRY: CASE MANAGE...	05/23/2011	D
V1300CR201180201	MINUTE ENTRY: CASE MANAGE...	05/23/2011	D
V1300CR201180201	NOTICE: NOTICE	05/23/2011	D
V1300CR201180202	MINUTE ENTRY: CASE MANAGE...	05/23/2011	D
V1300CR820000049	MINUTE ENTRY: APPLICATION ...	05/23/2011	D
V1300CR820010366	MINUTE ENTRY: PETITION - DE...	05/23/2011	D
V1300CR820030703	MINUTE ENTRY: APPLICATION ...	05/23/2011	D
V1300CR820030703	MISCELLANEOUS: EXHIBIT LIST	05/23/2011	D
V1300CR820040039	MINUTE ENTRY: APPLICATION ...	05/23/2011	D
V1300CR820040480	NOTICE: HEARING	05/24/2011	D
V1300CR820040704	MINUTE ENTRY: STATUS CONF...	05/23/2011	D
V1300CR820050527	ORDER: TERMINATE/DISCHAR...	05/24/2011	D
V1300CR820050710	MINUTE ENTRY: APPLICATION ...	05/23/2011	D
V1300CR820050754	MINUTE ENTRY: STATUS CONF...	05/23/2011	D
V1300CR820060009	MINUTE ENTRY: APPLICATION ...	05/24/2011	D
V1300CR820070436	ORDER: GRANTING	05/25/2011	D
V1300CR820070570	ORDER: WARRANT	05/25/2011	D
V1300CR820070578	WARRANT: ISSUED	05/25/2011	D
V1300CR820070773	MINUTE ENTRY: APPLICATION ...	05/23/2011	D
V1300CR820080169	ORDER: TERMINATE/DISCHAR...	05/24/2011	D
V1300CR820090183	ORDER: TERMINATE/DISCHAR...	05/24/2011	D
V1300CR820090283	ORDER: DETENTION	05/25/2011	D
V1300CR820090283	WARRANT: ISSUED	05/25/2011	D
V1300CR9980313	MINUTE ENTRY: APPLICATION ...	05/23/2011	D
V1300JV820090175	MINUTE ENTRY: DRUG COURT	05/23/2011	M
V1300JV820090091	MINUTE ENTRY: DRUG COURT	05/23/2011	M
V1300JV820090091	MINUTE ENTRY: DRUG COURT	05/23/2011	M

Previous Results Next Results Options

The Daily Courier

Monday, May 02, 2011

DeMocker defense moves to have case tossed, alleges prosecutorial misconduct

Scott Orr

The Daily Courier

Monday, May 02, 2011

CAMP VERDE - Steven DeMocker's defense team filed a motion to dismiss his murder case for prosecutorial misconduct or, alternatively, to disqualify the Yavapai County Attorney's Office from prosecuting the case Monday afternoon, according to court documents.

DeMocker, 56, is accused of beating to death his ex-wife, Carol Kennedy, in July 2008. He is preparing for a retrial after his defense team quit during his first trial, bringing it to a quick end without resolution.

Attorney Craig Williams said the case should be thrown out because members of the County Attorney's Office, among others, "illegally viewed and printed ex parte pleadings using the OnBase system."



Les Stukenberg/The Daily Courier
Defendant Steven Democker is seen in this June 4, 2010 photo. His defense team filed a motion to have the case dismissed.

An ex parte pleading is one that is intended to be seen only by the party filing it and the judge. OnBase is the computerized document retrieval system used by the County Attorney's office.

Williams claims in the filing that ex parte filings were viewed and printed by the County Attorney's Office and Yavapai County Victim Services 60 times. He also asserts that those two agencies and the Yavapai County Sheriff's Office viewed and printed sealed documents 104 times.

"This was not a one-time peek at forbidden fruit," he wrote. "It was systematic." Williams said the actions constitute an illegal investigation.

In particular, Williams singled out Jack Fields of the County Attorney's office, saying he researched sealed and ex parte documents nearly 30 times. Fields often represents the YCSO, and Williams said, "The fact that their attorney, Mr. Fields ... has been spying on the court-ordered sealed ex parte documents is a gross Constitutional violation."

He also listed other employees of the County Attorney's office - Barb Paris, Barbara Genego, Deb Cowell, Kathy Durrer, Pam Spear, Paula Glover, Rhonda Grubb, Seretha Hopper, Tony Camacho and Marie Higgins of Victim Services, YCSO Det. Steven Page, and YCSO Det. John McDormont - and the documents he claims each viewed.

"What happened in this case is way beyond the pale," Williams wrote. "It is outrageous." He asked Judge Warren Darrow to dismiss the case with prejudice, meaning it could not be refiled, or to

disqualify the county attorney from prosecuting it.

"We dispute it (the allegations made in the motion) and will respond in accordance with the rules," said Chief Deputy County Attorney Dennis McGrane. He was unable to address specific claims because there is a gag order on the participants in the case.

DeMocker appeared in court on Monday also, for oral arguments on the motion to release him on his own recognizance, decrease his bond amount or move him to the Coconino county jail. His attorneys said the fact that he has been held in solitary confinement for six months, with just 30 minutes a day outside his cell, is beginning to affect his mental stability.

While Judge Darrow appeared to be somewhat sympathetic, asking if six months in solitary confinement is an "accepted sanction" for what DeMocker was accused of doing - ordering a "beat down" of another inmate - Darrow also said he was not certain that action to change conditions of custody by a judge was constitutional.

He will issue a written ruling on the motion at a later date.

Katie DeMocker, Steven's daughter, was in court Monday. The judge asked her if she had anything to say in regard to his decision on the motion, but she did not.

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STATE OF ARIZONA
v.
STEVEN CARROLL DeMOCKER

P1300CR20081339

VOLUME	DATE	DOCUMENT TITLE	SEALED	IMAGED	Ex Parte	Document opened V-viewed P-printed	Viewed and/or Printed By:	Dept.
3	08/03/2009	Order (for Rule 15.9) Ex Parte Motion filed 7/21/09	✓	✓		8/5/09 thru 10/15/09 V & P	S. Hopper V B. South P A. Camacho V P. Glover V	CA PD VS
3								
3								
3	08/19/2009	Order (Rule 15.9) Ex Parte Application filed 8/18/09	✓	✓		8/20/09 V & P	S. Hopper P J. Jordan V	CA PD
3	08/21/2009	Order: Amending (15.9 appointment) Ex Parte Application filed 8/18/09	✓	✓		8/24/09 V & P	S. Hopper P J. Jordan V & P A. Camacho V P. Glover V & P	CA PD VS
3	09/02/2009	Motion (for Rule 15.9) Ex Parte Motion filed 8/31/09	✓	✓		9/4/09 thru 9/16/09 V & P 1/14/10 V	S. Hopper P B. Paris V K. Durrer V J. Fields V J. Jordan P Anthony Camacho V P. Glover V & P	CA V V V PD VS
4								

VOLUME	DATE	DOCUMENT TITLE	SEALED	IMAGED	Ex Parte	Document opened V- viewed P- printed	Viewed and/or Printed By:	Dept.
4						1/14/10 V	P Eggers A. Falick	V
4								
4								
4								
4	11/16/2009	Order: Order (15.9) Ex Parte motion filed 11/09/09				11/17/09 V & P	J. Jordan P. Glover	PD VS
5								
5								
5								
5	12/17/2009	Order: Appointing (Rule 15.9) Ex Parte Motion filed 12/11/09				12/18/09 V	S. Hopper P. Glover	CA VS
6								
6								
6								
6								
6	01/14/2010	Order: Appointing (Rule 15.9) Ex Parte Application filed 1/11/10				1/14/10 & 1/15/10 V & P	B. Paris S. Hopper J. Jordan	V P PD

VOLUME	DATE	DOCUMENT TITLE	SEALED	IMAGED	Ex Parte	Document opened V-viewed P-printed	Viewed and/or Printed By:	Dept.
6	01/14/2010	Order: Appointing (Rule 15.9) Ex Parte Motion filed 1/11/10	✓	✓		1/14/10 & 1/15/10 V & P	P. Glover V Barb Paris V S. Hopper P J. Jordan P P. Glover V	VS CA PD VS
6	01/14/2010	Order: Appointing (Rule 15.9) Ex Parte Motion filed 1/11/10	✓	✓		1/14/10 & 1/15/10 V & P	Barb Paris V S. Hopper P J. Jordan P P. Glover V	CA CA PD VS
7								
8	02/19/2010	Order: Order (Rule 15.9) Ex Parte Application filed 2/11/10	✓	✓		2/22/10 V & P	S. Hopper P P. Spear P A. Camacho V	CA VS
9								
9	03/26/2010	Order: Appointing Ex Parte Motion filed 3/15/10	✓	✓		3/29/10 V & P	B. Genego P B. Paris V P. Glover V	CA VS
10								
11	04/21/2010	Order: Order (for Rule 15.9) Ex Parte Motion filed 4/13/10S	✓	✓		4/22/10 V & P	S. Hopper P P. Glover V	CA VS
11								
11	04/28/2010	Order: Order (for Rule 15.9) Ex Parte Motion filed 4/23/10	✓	✓		4/30/10 thru 10/10/10 V & P	A. Camacho V P. Glover V B. Genego P B. Paris V J. Fields V	VS CA
11								
13								

VOLUME	DATE	DOCUMENT TITLE	SCALED	IMAGED	EX Parts	Document opened V- viewed P- printed	Viewed and/or Printed By:	Dept.
13	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
16	08/09/2010	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

1/7/11

[REDACTED]

[REDACTED]

[REDACTED]

P1300CR20081339

SEALED DOCUMENTS

[illegible]

